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### MISCELLANEOUS.

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#### General Summary.

As we are still without Arrivals from England, and have no later European News, through the other Presidencies than has been already communicated, we take occasion to occupy a Sheet of our present Number, with the principal portions of one of the best Articles in the last Number of the *EDINBURGH REVIEW*, on the Trial by Jury in Scotland. It embraces so many excellent and important observations on the danger of Discretionary Power being invested in Judges, and has so much that will apply to the Administration of the Laws in every country, that we shall perform an agreeable and we hope a useful duty in disseminating it widely among those who are interested in the purity of Justice. The *SCOTSMAN* of the 29th of December, the last Number that has reached India, has an article on the same subject, and as introductory to the Extracts from the Review, we cannot do better than to republish it at the same time. It selects the following sentence from the Review as its motto, and then proceeds.

There is nothing in which the people of this country have a deeper or more immediate interest, than in the administration of Criminal Law; and, therefore, they ought never to lose sight of the causes which make, or which keep it pure.—*Edinburgh Review*, No. 71. Art. 9

Our sole reason for meddling with this subject at present is to call the Public attention to the article from which we have taken our motto, and which contains one of the most powerful and conclusive arguments that we have ever read. Nothing more can be necessary to satisfy reason; but prejudice is not so easily overcome, and sinister interest has a thousand ways of misleading those who act under its influence, and still more of deceiving the public. In matters of law too, it is unfortunate that imposition is more easily practised than in any other. Their technical complexion repels all but professional men, who derive profit from abuses; and, as the interest of society generally is supposed to be future and contingent, it becomes exceedingly difficult to rouse the public to a proper sense of their importance. It would be easy to show, however, that every man is directly interested in the administration of justice; that national wealth and prosperity depend as much upon the purity of judicial procedure, and the integrity of those who officiate in our courts of law, as upon all other causes taken together; and that the happiness and progress of society depend almost entirely upon the free exercise of human reason, which again depends on the impartiality and independence of juries in criminal matters. But we cannot, within the narrow limits assigned us, enter upon such a wide field of discussion. It is from the results of such inquiries, however, sanctioned as they are by experience, and grounded on the deepest feelings of the human heart, that the wise and enlightened of all countries, but especially of England, have so uniformly and warmly panegyrized *Trial by Jury*. But trial by jury is nothing unless the jury be named impartially. The advantages attending jury trial, says PALEY, is *indifferency*; and BLACKSTONE tells us that "juries should be *indifferently* chosen and *superior to all suspicion*." Let us see, then, what security we have for this *indifferency* by the law Scotland.

As far as we have been able to ascertain from books of inquiries, the mode of proceeding is as follows:—In each county of Scotland there is a Sheriff-Depute appointed by the Crown

—in each Royal Burg, a set of Magistrates appointed by themselves, and, for the most part, in the interest of the Crown. These Sheriffs and Magistrates have the power of naming Constables. By the Constables thus named, lists are made up of the persons who are considered fit to act as jurors; but we are not aware that any rules are prescribed for these Constables, either by law (as now modified by usage) or by their superiors. For any thing known to us, they may do in this matter exactly as they please, and without challenge, or right of challenge, at the instance of any but their immediate employers, whose views and feelings may, or may not be studied and attended to. The next step, we imagine, is, the lodging of the lists, so made up at the discretion of the constables, with the Sheriffs-depute or Magistrates, whose clerks, we suppose, then make a return to the Clerk of the High Court of Justiciary. But we have yet to learn, that a right would be acknowledged, in any party interested, to ascertain whether the Sheriffs and Magistrates, or their clerks, had really sent the lists, as made up by the constables, to the Justiciary Court. By the statutory regulations of 1672, it was ordered, "that the persons to pass upon assizes be listed, and their names and designations inserted in one roll, to be signed by the said Judges (of Justiciary) or their quorum." And by act of Court, (13th November 1690), it was appointed that this list should be made up "at the sight of one of the Lords;" but, according to Mr. HUME, "this duty has, in later times, been committed to the Clerk of Court alone, who, (it is added,) takes the assizers in rotation, from his general list of the persons who are liable to be called on for this service." It would puzzle all the lawyers in Scotland, however, to give an accurate description of *who are liable to serve as jurymen*, and point out the rules upon which the various lists, from those of the constables to the general one of the Justiciary Clerk, are made up; and it is not, we believe, acknowledged that any practitioner has a right to ask the clerk of this high Court how his general list is prepared, and to be present, as attorneys are entitled to be in England, when the jury is set or struck. We insinuate nothing against any one of these officers and functionaries from the constable upwards. We are quite willing to hold, that each performs his duty as well as he can, according to his education, principles, and prejudices. We complain only of the want of that regulation and inspection which is necessary to vindicate the law itself, and place it beyond the reach of suspicion. But so it is at present; and to complete this view of the case, we have to add, that after forty-five persons are sent into Court by the clerk, the sole power of reducing these to fifteen or selecting the petit jury who try each case, is lodged in the hands of the presiding Judge. "The Clerk of Court, (it is stated in the article referred to) receives his situation from the hands of the Court.—At Edinburgh, the Judge only names the fifteen; but at the Circuits, he names the forty five too"—and from lists containing, not only names, but such descriptions "as are quite sufficient to let each individual be distinguished and known."

It is quite clear, therefore, that the law of Scotland gives no security for *indifferency*. Bias, and selection from political, or some undue feeling, might be seen in the constable, or in any or all of the functionaries above him, and yet it would not only be impossible to establish the fact, but unsafe to allude to it. The time has been when the foulest practices were resorted to, to cut off the lives of innocent, useful, and honourable men. Notwithstanding the wisdom of our ancestors, they permitted every

petty Chieftain, or Baron, to hold his own courts, or destroy whom he pleased, under the pretence of administering justice. And not only did they permit all sorts of iniquity, but they embodied, in the shape of general laws, many things of which the highest Tory would, at the present day, be just as much ashamed as the staunchest Whig. It is our fortune, no doubt, to live in better times; but that is the strongest reason possible for now inducing us to place the law on that footing which shall prevent the recurrence of such frightful evils. But we have not yet stated all the defects of our system. Our ancient practice was to give the Lord Advocate, or the Crown, directly the nomination of all juries; and as the whole responsibility was thrown upon one great officer, it was perhaps better for the accused than to be as at present, at the mercy of so many subordinate functionaries. But reckless as our law is at present respecting the composition of juries, it does not, as in England, allow any challenges without cause assigned; and as to those which may be assigned, they are in the present state of manners and society of no value. Is it any protection to an accused party that he may object to a juror on the ground that he is deaf, dumb, under age, or declared infamous by the sentence of a court? The only other objection worth naming is that of *deadly or special malice*, which is almost incapable of proof, since he by whom it is cherished would not acknowledge it. "Known or suspected partiality (says the writer in the Review)—violence of temper—injustice—notorious stupidity—personal dislike—gross prejudice—unprincipled character—*political rancour*—all these, and a thousand other nameless, but powerful considerations in the composition of a jury are disregarded, and, to such an extent, that they cannot even be alluded to."—In the case of Murr, an *Officer of the Navy* was put upon the jury; in that of Gerald, who was tried not long afterwards, it was held not only to be no objection to a jurymen that he had previously said he would condemn any member of the British convention, but the Judge expressed "a hope that there was not a gentleman of the jury who had not expressed the same sentiment."

Some persons hate other men by classes; some, believing the Crown to be always in the right, consider accusation, especially in political matters, as equivalent to guilt; and all have a bias, though sometimes unconscious of it, in favour of the views of their own party, friends, and connexions, political or otherwise; but, as our law stands at present, an accused party may find himself in the situation of a victim utterly incapable of resistance. His law-agent knows nothing of the manner in which the assize of forty-five has been made up; he is indulged with no peremptory challenges, and he may be found guilty by any eight men who pass upon his jury! In the article so often alluded to and quoted, the Reviewer directs this argument almost exclusively against the discretion left with the Bench in selecting, or, as ESKINE has it, *picking the jury*.—and, we think, wisely; because the Judges must be anxious to get rid of a task, so invidious in its nature, that however purely and fitly the discretion may be exercised, will always expose them to suspicion and misapprehension. It is, besides, a great constitutional principle, that the judicial should be separated from all ministerial and political functions.

A Judge, as is well stated by the Reviewer, should have nothing to do, but to sit like an Oracle and propound the law,—furnishing, while he does so, the means of appreciating his own views of it. "This, while it is salutary as a check, is also the legitimate source of his own true respectability." But if a Judge has to name a jury, he must do so, either by some routine, which makes the nomination as much a matter of chance, as if accomplished by ballot, or upon a consideration of circumstances. If the latter method be adopted, motives immediately come into play;—motives, it is true, which cannot be discussed as relative to any particular case, but which the parties in each case will secretly reduce to their elements, and think, if they do not say with the Reviewer, "that if the interior workings of the Judge's mind were disclosed, it would be seen that, however unconsciously to himself, he had instinctively been led to prefer those who, he believed, were likely to entertain the same opinion upon the

case with himself." The retaining of such a power, therefore, is injurious to the character of the Bench. The exercise of it is equally so to the jury. It is implied in the law, that jurors shall have wills of their own. But it is natural for a Court to dislike resistance and altercation—to be fond of those called *reasonable persons*, who have no self-will, who readily comply with, if they do not anticipate the views of the Bench. This is a state of things which gratifies human pride on the one hand, and human indolence on the other. Juries, who cannot be challenged by the parties, will naturally be inclined to seek respect from the Court; and in this manner the state of the law which exposes the Judge to misconception, exposes Jurymen to the temptation of becoming passive instruments in the hands of the public prosecutor, or the Court. The reasons for coming to this conclusion are stated with admirable beauty and effect in the Review. Equal power and eloquence is displayed in discussing various other branches of the subject, which, to our great mortification, we must pass over here. The neglect on the part of the Lord Advocate to avail himself of such an opportunity as Mr. KENNEDY's Bill presented, of transmitting his name to posterity in connection with one of the greatest and most necessary improvements of the law, is spoken of as it ought; and the conduct of our Scotch Freeholders, on the same occasion, is very ably exposed. It is a blot which their grand-children will not be able to eradicate. But although it be unfortunate that they hold so much political power in their hands, nothing which they can do is of any moment in the scale of intellect. They form but a small portion even of our Scottish population, and a still smaller portion of the intelligence of our country. Our consolation is, that the fate of Scotland must be decided by that of her sister country, whose institutions are infinitely more favourable to independence and integrity. One of the greatest men in the political world of the present day is known to be somewhat indifferent to the interests of Scotland, and his example, we fear, is followed by too many others. This is wrong; since the mere sufferance of imperfect or dangerous institutions in Scotland must be injurious to England. It is to that country, therefore, that we look for the patriotic energy requisite to carry any measure for the improvement of our criminal code. At present it exhibits deformities which would be sought in vain in that of any other country in Europe which has adopted trial by jury. And it is idle in the extreme to eulogise what all will allow to be excellent, while the only foundation on which indifference, impartiality, independence, and integrity, can be created and secured is wanting. The great qualities just named, ought to be possessed by jurors as well as judges. And although we are quite willing to ascribe to the latter every thing which can give value to the judicial character, no testimony is of any real value, while it is in their power, and in the power of perhaps half a dozen of subordinates, to do what it is not in the power of the sufferer, or the public, to discuss or reprobate. It is humiliating in the highest degree to reflect, that Sir GEORGE MACKENZIE, in dedicating one of his works to the Duke of LAUDERDALE, assured the most corrupt and oppressive being that ever appeared in human shape, that he (the monster in question) "spent the one half of the day in studying what is just, and the other half in practising what is so!" Enemies as we are to the exercise of every thing like legislative power on the part of our judges, we can easily conceive how they may be unwilling to make the reform proposed by Mr. KENNEDY originate with themselves. Yet we cannot see that it would be a greater stretch to order fifteen names out of the forty-five to be ballotted as a jury in each case, than to authorize one of their number to do what had been pointed out as the work of a quorum under the authority of Parliament. Nay, we have a great doubt, whether such a proceeding would be going farther in principle than was done only the other day in assigning so many seats in the Justiciary Court exclusively to Writers to the Signet. And the present Lord Advocate, while Sheriff-depute of the county of Edinburgh, certainly went as far in prohibiting all pleadings before him, except such as were not merely subscribed, but certified to be "drawn" or composed by a Solicitor or Advocate



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named, as if he had prescribed certain rules to be observed by his constables in making up lists of jurors, and authorising the agents of accused persons to be present at the returning of the porportion of Edinburgh juries for each trial. What a lustre would it reflect on the name of the Sheriff who should first set such a memorable example! What a security would it afford to accused persons, if an Act of Adjournal was made, authorising their agents to be present at all the steps taken with respect to the composition of juries! And what a reproach would thus be removed from the law of Scotland! We would certainly rather see all this—and all that is required to render our laws perfect—accomplished directly within the walls of Parliament; but it is also not unpleasant to see, that powers which our Courts and Sheriffs have exercised for other purposes, might be made to accomplish much that is desirable in the wide and important field of criminal jurisprudence.—*Scotsman*, Dec. 29, 1821.

**New Admiration of France.**—The of France King has at length found himself under the necessity of dismissing his Ministers. A new Administration has been formed, taken, as our readers will perceive, from the party of the Ultra Royalists. This event has been very generally anticipated as the necessary result of the Address of the Chambers; for no one could suppose that an overwhelming majority, produced by the union of the two great parties which divide France between them, could be reduced to a minority by the ordinary means, or that a new Election under the existing law would have altered the matter; and the attempt to overturn the Constitution, and substitute another by Royal Ordinance, with a different plan of Election, though threatened by the late Ministers, was evidently a hazardous experiment, particularly in the present posture of affairs in Europe.

This change will soon probably lead to most important consequences. In the first place the Ultras are pledged to a foreign policy more suitable to the national glory and reputation. To be consistent they must let the power of France be immediately felt in Italy and in Greece. They are pledged to this, and it is clearly their interest to make good their pledge. They are opposed to a party, which even *THE COURIER* allows to consist of "nine tenths of the people," and with such fearful odds against them, it would be madness to run counter to the national feeling. If they do not appeal powerfully to this feeling, and endeavour to gain for France her old ascendancy in Europe, their rivals will obtain an easy victory over them.

We therefore consider ourselves well warranted in looking forward to the most important results from this change. France is intrinsically so much more powerful than any of her neighbours, that her Government has only to call forth the energies of the nation to make the best of them tremble. The general combination too is now broken up. Russia has boldly entered on the execution of her separate plans.—Prussia, without the support of general feeling in Germany, is nothing, and she has long been detested both by her own subjects, and the subjects of her neighbours. Austria has still less to expect from Germany;—Austria, whose iron sceptre, whose attempts to revive the ages of ignorance and superstition, whose restoration of the Jesuits, and whose gloomy Inquisition and interference with private life, have, independently of her aggressions, rendered her the object of European hatred and abhorrence—Austria, therefore, stands alone exposed to her more powerful, more energetic, and more intellectual neighbour.

Whether the Ultras, now that they have regained power, will attempt to carry into execution the views which they are believed to entertain, remains to be seen. In that case we do not despair of the good cause. We conceive it has less to fear from its open and undisguised enemies; men, who though its enemies, are many of them enemies from principle, than from the contemptible and unprincipled creatures who have been driven from power, and who had no other title to it than the influence derived from the favour of the Monarch, and the means of corruption at their disposal.—*Morning Chronicle*.

**Spain.**—The continuance of tranquillity in Spain is said to be every day becoming more problematical. We stated, at the time when the revolution took place, that it was highly improbable the country could enjoy any real or lasting tranquillity if FERDINAND was permitted to continue on the throne. Every thing that has since occurred has tended to strengthen this remark. Whether right or wrong, it is plain, the great bulk of the Spanish people regard him only as a manacled tyrant, who will avail himself of the first favourable opportunity to overthrow the Constitution. It is impossible, indeed, that they should ever consider FERDINAND in any other light than as the sworn enemy of freedom. His former abolition of the constitution—his proscription of the very individuals whose courage and patriotism preserved him a throne—his re-establishment of the Inquisition, and the murders and atrocities committed by his satellites, will live for ever in the remembrance of the Spaniards. How can subjects have any confidence in the patriotic intentions of such a monarch? They must view all his proceedings with jealous and jaundiced eyes. What they have already suffered from his tyranny and despotism will naturally render them anxious to guard against every step which can, by possibility, tend to increase his authority; and to take fire at an incident which, were it to happen under the reign of a different prince, would be altogether disregarded. But we hope the crisis will pass off without violence. If, however, blood should unhappily be shed, it will be ascribable to those whose crimes have justly exposed them to the public indignation and whose long course of misgovernment has drawn upon them the avenging wrath of the victims of their oppression.

**Illicit Distillation.**—On Tuesday evening, an illicit still was discovered and destroyed in Brighton by Excise officers from this city. A man connected with it was taken prisoner, but a mob of some hundreds rescued him. In the fray one of the officers was severely hurt, and another with some difficulty escaped into an adjoining house, where he was forced to remain till the following morning. The audacity with which these proceedings are carried on is hardly to be credited. We are informed that the labour in this abominable profession is divided. Wash is made, and can be bought in any quantity from a gallon upwards, and distillation goes on from a tea kettle to a large still, producing altogether a quantity of spirits which few would believe. We have also heard, from authority on which we can place the firmest reliance, that in the west end of this city, and a district of some miles around that quarter, that while there are only 440 licensed houses for selling spirits, there are 630 unlicensed, which sell spirits, many of the inmates of which are brought up every three months for fine, and not one of whom, though constantly carrying on business, can sell one drop of legal spirits, because, being without licenses, they can obtain none by permit; not have we any reason to believe that matters are better in other places. In London, we observe, that the seizure of stills is becoming more frequent; and we have heard as a fact, that having become too numerous to render the trade profitable, several of these pests of society have swarmed off and left this city, and also from about Edinburgh, and gone to London, where they believe they will have a wider, safer, and more profitable field for the exercise of their calling. On these points they possess in general correct information.—*Glasgow Chronicle*.

**Field of Waterloo.**—Among the many interesting anecdotes recorded of the memorable field of Waterloo, the following is a fact highly deserving of publicity:—Three brothers, Scotsmen, each remarkable, no less for his tall handsome figure, than for his soldier-like deportment, and belonging to different regiments, had not seen one another for many years, having been fighting the battles of their country in different quarters of the globe. They fought at Waterloo, and, like the Alban Curiatii of old, were all three wounded; but each unconscious of the other's presence or fate on that glorious day, till their first mutual recognition of each other in the same apartment in the military hospital, where, by a singular change of fortune, they had been conveyed. These brave fellows all happily recovered—and, what is very remarkable, they are three of seven brothers who have all served in the British Army.—*Scotsman*.

**Dangers of Discretionary Power.**

EDINBURGH REVIEW—NO. LXXI.

*Art. IX. The Elements of the Art of Packing, as applied to Special Juries particularly in Cases of Libel Law. By Jeremy Bentham, Esq. Banner of Lincoln's Inn. 8vo. pp. 270. London, 1821.*

## EXTRACTS.

There is nothing in which the people of this country have a deeper or more immediate interest, than in the administration of Criminal Law; and therefore they ought never to lose sight of the causes which make, or which keep it pure. There are, some who think, that the principal of these causes is the unimpeachable integrity of our Judges; and of course these persons must hold, consistently with this opinion, that the larger the Discretion is with which Judges are invested, the judicial system must be the better. This, however, is a very dangerous error; and one that is as repugnant to the genius of the Constitution, as it is to sound reason. For though we have the highest admiration of the great qualities that have become familiar to us in the British judicial character, and feel prouder of the scheme of justice which the integrity and learning of those who preside in our Courts has helped to mature, than of any of our other national achievements,—holding the splendour even of our warriors as eclipsed by the more civilized glory of our Judges,—still we think it perfectly plain, that this excellence, instead of being produced, has a direct tendency to be destroyed, by that very Discretion with which the injudicious think it so worthy to be intrusted.

For what is it that forms and preserves the peculiar integrity of a Judge? We need say nothing of their long previous training—of their removal from the usual scenes of corruption—of the infamy which would attend a detected violation of duty—or of the honourable fame which rewards the proper discharge of it;—because these incentives to virtue are obvious and universal. But the more special causes which have operated in Great Britain producing our unrivalled administration of penal justice, are these. 1. The precision to which the leading principles and subordinate rules of Criminal Law have been reduced. Much certainly is, and always must be, wanting to render this precision complete. But infinitely more has been done in this way here than in any other country, and quite enough to have produced this result,—that a Judge can scarcely ever act except by the side of a known standard by which his conduct may be measured. It is obvious that this palpable check is removed every time he can truly say no rule has been given to him, except his own will. 2. The separation of the judicial from every other office. In some countries the Judge is not only the accuser, but the executioner; and the direct interference of the Court may be seen in every step, from the first suspicion against the criminal, down to the infliction of his sentence. With us the theory is, that the Courts are not only separated from the executive and legislative powers, but that, even within the judicial sphere, they are saved from all ministerial functions. A Judge ought to have nothing to do, but to sit like an Oracle and propound the law. 3. The constant presence of a Jury. The various effects of this upon British jurisprudence, deserves a more minute investigation than it has yet met with: But at present we have only to observe, that the mere presence of the men would be useless, and that the benefit of the institution arises solely from their rights and their duties, and the independence with which these are discharged; and hence, in order to prevent the debasement which might arise from their owing the honour of the station they are called to, to the good opinion of the Court, the correct principle is, that their connexion with the legal part of the institution shall not commence till some separate power shall have placed them in their box. 4. The publicity of the proceedings; which subject every person engaged in Courts of Justice, but more particularly those who preside, to the immediate and irresistible check which arises out of the combined love of reputation, and the consciousness of the chance of correction. It is upon this principle, that it is not enough that the results of the proceedings be made known. The Judge is expected to furnish the means of appreciating his own conduct, by openly stating a reason for every thing that he does. It is not sufficient that he has, or that he said he really has, a reason. He must give it forth—and this, too, for the very purpose of its being questioned by an active and independent Bar. This, while it is salutary as a check, is also the legitimate source of his own true respectability. There was a time in which one of the Supreme Criminal Courts of Scotland used to go through the ceremony of hearing the parties, after which the Judges retired into an inner apartment with the Lord Advocate, who was always on one side, and then, after what was called deliberation, the accused was called in and told his doom. It is needless to add, that this tribunal came at last to be a mere instrument of tyranny and murder. Such is the danger to which all Courts are exposed, where there are steps of vital importance taken by the Judges, either

from no reason at all, or from reasons that are not openly avowed, or, though avowed, are protected from discussion.

Conceiving these to be the true elements of judicial excellence, it was with the greatest satisfaction that we heard of a Bill having been introduced, during the last Session of Parliament, by Mr. Kennedy, for relieving the Judges in the Criminal Courts of Scotland from one of the most painful duties they are called upon to perform;—a duty which no other Judges, so far as we know, within the sphere of the British Law, are asked to discharge; and which indeed is so invidious, that, if it were now attempted to be forced upon them, for the first time, we are convinced that many of them, especially of the higher order, would rather resign their situations than undertake it. We allude to the practice which prevails in this part of the country, of requiring every Judge who tries a criminal case by Jury to SELECT THE INDIVIDUALS OF WHOM THE JURY SHALL CONSIST! Many of our readers will start at the very mention of such a custom. Nevertheless a practice, of which we cannot discover the origin, but which was introduced long before the blessings of the British Constitution were opened to us, still continues; and at this day the Judge names the Jury. The bill in question proposes to change this,—and to substitute a ballot, with a limited right of challenge to both parties; a remedy for which there are many precedents.

In discussing this subject, there are two considerations which appear to us to be quite decisive of themselves, and to supersede all further investigation, and yet which we are nevertheless willing to leave entirely out of view. These are, the impossibility of reconciling the present practice with the constitutional theory of Trial by Jury: and the possibility of corruption on the part of the Judge. If it be supposed that the Judge is partial or corrupt, it is plain that this practice just gives up any party, whether prisoner or prosecutor, whom he chooses to destroy, as a victim utterly incapable of resistance. And even where their purity is unquestionable, it seems to us to be equally clear, that the Judge cannot be allowed to name the Jury, without directly breaking down the constitutional line by which these two component parts of our Courts of Justice are separated, and which has been the great theme of admiration with all those who have expounded our political institutions. This one view is to us perfectly satisfactory and conclusive; and must be so to all those who understand or venerate the great principles on which the different departments of our public system are adjusted. It is for this very reason that we do not think it necessary to say more about it. It is too obvious to require explanation, and too indisputable to admit of attack. The possible corruption of the Judge stands in the same situation; and moreover, although it be the grossest folly ever to imagine that our rights are sufficiently secure, merely because they depend on the virtue of individuals; yet we willingly avoid doing more than alluding to cases, which could not be fully investigated, without making suppositions which the long established integrity of our Courts might seem to render unnecessary or objectionable.

But, leaving these simple and extreme cases out of view (though by no means renouncing them as immaterial to this Bill,—in favour of which, we repeat, that we think them conclusive), let us inquire if there be no other objections, of a different kind, to that singular mode of constituting a Jury, which our countrymen alone, out of all the people upon earth who have tried the Jury system, have adopted. For this purpose, let us observe a few of the more prominent and necessary effects of our usage upon the Parties, the Jurymen, the Judges, and the general character of our Criminal Jurisprudence.

Nothing is so indispensable for the security of private rights, or the general tranquillity of State, as that Parties should not only have, but should have good reason for having, confidence in the constitution and proceedings of Courts of Law. Now, if any one wishes to discover the principle on which they come to have confidence in a Jury, or, in other words, in the intellectual qualities and propensities of those who compose it, let him only observe what it is that parties do with respect to witnesses, or arbitrators, or any other persons, on whose honesty and sagacity they know that their interests must ultimately depend. Let every idea of fraud, or conspiracy, or animosity, be excluded. Nevertheless, observe the anxiety, the zeal, the intelligence, with which they sift every circumstance in the history, situation, or character of these persons;—the unexpected variety of irresistible reasons against trusting them which this scrutiny discloses, even where the general reputation of every one of them is unimpeachable;—and the great comparative security into which the parties never fail to settle, after this salutary investigation has been closed, and has either revealed to them the exact source and direction of every injurious prejudice, or has had the more satisfactory result of convincing them that there exists no prejudice at all. Nobody could seriously propose that all this preparation should be superseded or prohibited, and that people, whose fortunes were at stake, should allow their claims to be decided, neither by high Judges, nor by persons taken from the public accidentally, but by a limited number of individuals chosen at the caprice of a third party, over whom they had no controul. No such suggestion could be made,



# JURISPRUDENCE.

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with reference even to the simplest and least suspected combination of circumstances. But if it be supposed that the matter in dispute has made a noise in the neighbourhood, or that there is likely to be cunning or keeness on either side, or that the contest is between an unprotected or unpopular man and one of power and influence;—how is it that all the tricks, prepossessions, or advantages arising out of this state of things, is counteracted and defeated? Is it not just by increased vigilance, and by trying to obtain a more thorough insight than ever, not merely into all the details of the case, but into the very minds of all those on whom its discussion is to depend; and by tracing all the filaments of all the prejudices or interests by which these minds are likely to be affected? This may seem an indirect and elaborate process; and so, in some views, it is. But it is by these means, and by these alone, that the practical operations of justice, in so far as they turn upon facts to be stated or judged of by human candour or observation, are conducted; and to attempt to ascertain facts, without those preparatory checks by which alone evidence can be judged of, is equivalent to an attempt to weigh without having first procured accurate scales. Nor let it be imagined that the absence or the presence of those circumstances which affect the scales, can ever be detected by any power, except by the activity and the self-love of the parties who are directly interested. To suppose, above all, that a Court, which is removed by its own nature from all immediate and personal knowledge of these details, can ever supply that vigilance and information which the parties can bring into play, or that parties ought to be satisfied with what the supposed fairness of a Court can give them in this respect, is to imagine human nature to be changed. Accordingly, when the law of Scotland directs that an accurate list of witnesses and of jurors shall be given to each prisoner fifteen days before his trial, it surely does not do so for the purpose of informing the Judge on whom the indictment that contains these lists is not served, but in order to enable and to tempt the accused to pry into every circumstance in the situation or character either of those who are to give, or of those who are to receive, the evidence against him. For if parties be interested in detecting every possible circumstance which can influence the credit due to a witness, they have an interest of precisely the same nature, though rather stronger in point of force, to discover every thing that can affect the leaning of a jurymen; and the injustice, or rather absurdity, of forcing them to trial without allowing them to investigate or arm themselves against the one cause of error, is just as gross as not allowing them to use any precautions of their own against the other.

But in any right discussion of this subject, it is necessary to be a little more jealous, and to consider what must be a prisoner's situation, if (without supposing the existence of any thing like corruption) there be, as in the course of human nature, even in its purest condition, there sometimes will be, a tendency to a bias against him on the part of Judges or of the Jury. On such an occasion, it may be literally held that he cannot be tried at all; he may be convicted or acquitted as the prejudice leans, but tried he cannot be; for every principle of fair trial is necessarily excluded where any one human being, under the appearance of exercising his discretion, has it in his power to avail himself of any existing prejudices, in order to secure an adverse Jury. To say that this cannot be supposed to happen often in this country, or that, if it did happen, it would equally corrupt all the other parts of judicial business, is saying nothing at all. We admit that it can occur rarely; but the misfortune is, that when it does happen, the abuse can never be detected; and, in the mean time, its mischief is irremediable. In the discharge of the other judicial duties, parties have always this great security, that reasons for every thing that affects them are given and can be discussed, whereas the motives of a Judge, in selecting particular men to serve upon a Jury, are buried impenetrably in his own breast; and when he errs, the moment at which alone, if at all, redress is attainable, passes irrecoverably at the very instant that his prejudices are indulged.

But let us suppose the Judge to be perfectly pure; and, moreover, that his experience enables him to resist every indirect prepossession. Still there are situations, and these too in the very cases for which Jury Trial is chiefly valuable, in which both parties, but particularly the accused, are exposed, to prejudices and to influence from a different quarter. The matter at issue, either from the question it involves, or the parties concerned, may have made a noise in the neighbourhood, or may have been keenly canvassed all over the country. It may, for example, be a political case, where the contest is in appearance between the Crown and a subject, but really, to a certain degree, between the party in power and their opponents. No such affair can arise without creating marked divisions and expressions of opinions, and in some measure pledging most people to a particular side; and it is on this principle that the law prescribes a peculiarly cautious form of trial for cases of Treason, where this source of partiality is supposed to be the most copious. If it be supposed that the Judges, either from their having originally belonged to one of the parties themselves, or from being ambitious of recommending themselves still farther to the Crown, or from their sincerely believing, as many honest men do, that the Crown must always be

right, are disposed to take advantage of the prejudice, the trial is made a mere mockery. But supposing every thing quite sound in this quarter,—is it not grossly unfair that the pretensions, either of the accuser or of the accused, should be judged of by a Jury entirely or chiefly composed of the wild and notorious adversaries of every thing bordering upon the case which one of them has to maintain? Was it right formerly to see Cavaliers professing to judge caudily of Roundheads, or Roundheads of Cavaliers? or did no evils happen in Ireland, from setting Protestants as Jurymen over Catholics, or in France, from setting the Catholic Judges over Protestants? What chance would a moderate Reformer now have with an assize of red-hot Radicals? or is it decent to behold a jury of inflamed, bigotted, enthusiastic, conscientious Tories, dealing with a poor, run-down, detected Whig? Yet what remedy there is for this, so long as every thing depends on the nod of the Judge, we really do not know. If his Lordship be corrupt, it is done on purpose; if he be weak, it arises from prejudice; and though he be both wise and honest, it must happen every moment from ignorance; and, whatever the cause be, it is impossible to say a word in order to ward off the mischief.

The principle of the Scotch system, we understand to be, that the Judge, in naming the Jury, really exercises his judgment and his will in each act. He does not specify the jurors at random, or by erecting a sort of a lottery in his own breast. If this were the way he proceeded, it would plainly be much better to set up an open and real lottery at once. Nor does he testify his impartiality, by first calling one name supposed to be friendly to one of the parties, and then calling another supposed to be hostile, or by regularly interlaying the different masses of prejudice, by the interjection of neutral men. If this, again, were the rule, nobody could deny that it would be a simpler and more natural mode of attaining the same end, to let the parties name an equal number of their own jurymen,—as each of them knows best how his interest lies,—and to dispose of the odd one by lot. But it is an operation of selection that the Judge is supposed to perform. He picks. He rejects some men, because it appears to him that there are good reasons why they should be rejected; and he takes others, because it appears to him that there are good reasons why they should be taken; and the elements of these opinions are furnished to him by his getting an articulate list of the name, occupation, and residence, of every one of the forty-five; which, in a small country like Scotland, is generally quite sufficient to enable any one versant in this sort of business to have a particular impression of the character, principles, and habits of nearly every individual on the paper. The principle of the thing therefore is, that the Judge selects; and that this selection proceeds, and indeed must proceed either on what he knows of the jurymen personally,—or what he has heard of them,—or from what he sees stated of their rank, occupation, and residence, in the list which he holds in his hand.

Now, what is the intellectual process that decides this rejection or choice? The first answer to this question is ready enough. Those are taken, it will be said, who are supposed to have most knowledge of the subject to which the trial relates,—or who hold stations of respectability,—or who are reputed men of good character,—or of right principle; and the rest are rejected. This may be all very true. But what is the ground on which the human mind applies their epithets to particular individuals? There is no need of metaphysical speculation to answer this. It is only necessary to observe one undoubted and common fact. All men associate chiefly with those of whom they think well. And who are these? Are they not, almost uniformly, those who agree with their own views and habits? What bond of attachment is so strong, as unity of taste and principle? All men like to see, by sympathy in others, the reflection of those qualities which they have been cultivating, and of course which they approve, in themselves. Inquire what books any one likes to read,—especially upon subjects of personal interest, and, above all, of a controversial character;—it will be found that they are those which speak his own sentiments. In minds very oddly constructed, it may no doubt occasionally happen, but it is surely very rare, that an unflinching adherent of ministry voluntarily exposes himself to conversion, by solacing his leisure with Opposition works, or that a member of Opposition really, without affectation, makes a comfortable repast upon the productions of his Government adversaries. In short, every man, and every class of men, is naturally attracted towards those characters which, by falling in with the frame of their own minds, give them no inward disturbance, and are judged of by that partial standard by which they judge of themselves. Hence we are satisfied, and indeed hold, that we have the authority of human nature for being absolutely certain, that if the interior workings of a Judge's mind who is naming a jury could be disclosed, it would be seen that, however unconsciously to himself, he was instinctively led to prefer those who he believed were likely to entertain the same opinion upon the case with himself. Even the illustrious Hale is said not to have been without this failing. 'His bias lay strongly for and against characters and denominations, and sometimes the very habits of persons. If one party was a courtier and well dressed,

and the other a sort of puritan, with a black cap and plain clothes, he insensibly thought the justice of the case with the other.\* This is not only the result of the great rule by which we all appreciate our neighbours; but there is something peculiarly irresistible to a Court, in an opportunity of abridging delay and toil, by avoiding every thing that is likely to create resistance and altercation. The Court likes the business of the day to go on smoothly, and naturally shrinks with horror from all those men, whether they be counsel, or agents, or witnesses, or any thing else, who are understood or conjectured to be troublesome fellows, —in other words, to have wills of their own: And this is particularly tempting in the case of a Jurymen, because he has great rights, and a good pretence for being vexatious, and cannot easily be put down, and may make the whole trial end disagreeably. An easy, submissive, or what is called a *reasonable* Jury, is therefore a peculiar favourite with all Courts; so much so, that we have some doubts whether, if it were not that their pronouncing the verdict divides responsibility, most Judges would not rather dispense with this incumbrance altogether. But the perfection of the institution certainly is to have the Jury, but to have no self-willed individuals upon it. As long as the Judge's mind predominates over the whole Court, every thing seems, to him at least, quiet, reasonable, and fair. But the instant that the operation of the constitutional principle, which is, that the Court and the Jury are to have no connexion whatever, except through the medium of evidence, begins to operate practically, then the painful feeling of discordance and opposition arises, and the day is spent, not under the placidity of power exercised over unobjecting deference, but in teasing and laborious efforts to remove doubts, to clear intricacy, to reconcile contradiction, and to produce coincidence of opinion, by explaining away all the circumstances that prevent it. And who is there, whether he be a Judge or not, who would not prefer the first of those states to the last, or would not insensibly be led to avoid every jurymen, who was suspected to be a person likely to disturb the easy and unquestioning serenity, so gratifying, not only to human indolence, but to human pride?

In all this, however, it should be observed, that this not only implies no unfairness on the part of the Judge, but, on the contrary, is rather a tendency which is apt to increase in proportion to the intensity of his honesty. A man of unconfirmed character, or of slight morality, cares as little about his jurors, as about his books or his friends. But a person of strong principle is apt to be keen in his opinions, because he is sincere in them. He is always positive that he is right: and therefore earnest in protecting and extending those sentiments which appear conscientiously to him to be best. This species of decision, indeed, is so very apt to beset strong virtue, that it is one of the qualities that are always assumed, and generally overdone, by those who wish to be thought more deeply impressed than they really are with the importance of the business they are engaged in. Persons, therefore, who act either from the real feeling, or from the assumption, of a deep and strong conviction have a natural preference for those whose opinions correspond with their own; and view with emotions bordering on exclusion and bigotry, all those who shock them by rejecting or questioning their creed. Joseph Gerald, who was tried for sedition at Edinburgh in the year 1793, was chiefly accused of being a member of the British Convention; at least this was the great overt act on which all the rest depended. This convention was unquestionably a criminal association; yet thousands of people all over the country belonged to it, many of whom must, in all probability, have joined it, or acted after they become members, in circumstances which palliated, or altogether removed, their guilt; and Gerald chose to make the absolute innocence of the institution a main part of his defence. A jurymen was named by the presiding Judge, against whom it was stated, as an objection by the prisoner, † That he had repeatedly declared in private conversations, that "he would condemn any member of the British Convention, if he should be called to pass upon their assize;" and I wish (said the pannel) to refer to his own conscience and his oath, whether he has not prejudged the principles on which I am to be tried. The answer made to this by the judge was, 'As this objection is stated, I hope there is not a gentleman in the Jury who has not expressed the same sentiment!' Strong criticisms have been made on this speech; the propriety or impropriety of which, however, we do not discuss; but the useful commentary which it suggests, consists in the example it exhibits of the tendency which every Judge, especially if he be vehement in what he conceives to be sound views of law or morality, has to reject or to accept of whole classes of men, according as they resist or uphold these principles which he happens to think right—even although it be regularly intimated that there are others, and among the rest the prisoner, who entertain very different views of that matter.

The security, therefore, which is given to the parties, by the impartiality of the Court in naming the Jury, amounts practically to this, that

the Jury, instead of being, as the theory of the law supposes, a component no doubt, but still an independent part, of the tribunal, is made, in a certain degree, the image of one individual Judge;—that this exact coincidence is not the natural result of the same evidence, operating to produce a general conviction among various minds, but is the effect of an artificial mode of collecting the individuals prior to the period at which the proof can begin to influence their understanding; and that this is particularly the case upon those very occasions when, from the prevalence of faction, or of other causes of prejudice, it is most desirable that they should be perfectly free.

With respect to the *general character of the administration of criminal justice*, our present law is necessarily attended with the evil just mentioned, of exposing Courts to injurious suspicions. It concerns the dignity and usefulness of every judicial establishment that its proceedings be believed to be regulated by general and undoubted principles of justice. But wherever things that are material, especially if founded on a supposed knowledge of the personal condition or character of third parties, are left to the undiscussed Discretion of Judges, this object can never be attained. Insinuations of ignorance, inattention, unfairness, or caprice, will always be made; and it is an aggravation of this misfortune to say, that these imputations are groundless: for this only shows that the mischief is inseparably connected with the system. There are cases where the purity and intelligence of the Judge is so unquestionable, as to prevent or silence these whispers. But still the regret, whether just or not, that bad Jurymen were selected, from the very impossibility, under the present law of avoiding this, remains; and this feeling, even where it is groundless, is only made the more lamentable from its being so. Every person who lived in Edinburgh in the year 1793, must remember, that the following anecdote about the case of Thomas Muir, who was then tried for Sedition, was current here in that day. It has been always mentioned in the printed accounts of the trial; and we see it stated as undoubtedly true in the debate at one of the late county meetings. There were certain persons who formed themselves into what was called, from the place where they met, the Goldsmith's Hall Association. The avowed object of this fraternity was to put down what they thought sedition; and for this purpose, they put forth a flaming declaration of loyalty. Mr Muir, who thought himself as loyal as any of them, signed this paper. But as soon as it was discovered that he belonged to the Friends of the People, or the British Convention, his signature was erased; and this proceeding was announced to the public by an advertisement, framed and circulated by the Association. In a few weeks after, Muir was brought to trial for sedition; and the main fact charged against him was his belonging to this criminal society. Of course, the whole of those who had been members of the Association, and had concurred in erasing his name, had virtually certified and published, that they thought the mere fact of belonging to the Convention constituted sedition. Yet every one of his fifteen Jurymen were members of this Association; and the Chancellor was one of a committee of fourteen who had actually struck him out. We beg it to be specially observed, that we do not mean to vouch for the accuracy of all, or of any part, of this story. All that we mean to assert is the fact, that the statement was made at the time of the trial, and that for nearly thirty years it has been employed to account for a result, which, in that particular case, we believe that most men now lament. Its being false, since it has always been prevalent, would be just so much the better for our view.

For, is it not to be regretted that such anecdotes should even be imagined, but more especially when utterly groundless, in order to explain the issues of grave criminal proceedings? And let it not be supposed that they are of rare occurrence. We specify this one because it is notorious, and has lately been founded on. But similar statements are found out or invented on similar occasions, every day. See what takes place in any case, but particularly if it be of political interest, at that part of a Scotch trial when the Jury is named. Observe the anxiety of the parties, as each successive name is announced by the Judge;—the conjectures who is to be approved of next, the vulgar and injurious explanations by the by-standers of the probable motives of each selection—the alteration of hope or of fear as the Assize gets gradually composed of one set of men more than another—the attempts, after all is over, to account for the verdict, not by the evidence, but by the men—and the speculations everywhere afloat as to what might have been the result, had it only pleased his Lordship to make a different choice. Who can deny that these practices and these surmises exist? And who will say that they are not to be regretted? To a certain extent, no doubt, the same thing would happen even while the jury-box was filling by ballot. But it is surely a very different thing whether the conduct, or the event, of a trial, is to be discussed with reference to any thing that depends on chance, and is for this very reason at least perfectly fair, or with reference to the will of the Court, where every thing that is either blamed or lamented, is sure to be ascribed, no matter how falsely, to some carelessness or peculiar motive in that quarter. These

\* North's Life of Lord Guildford, p. 61.

† Howell's State Trials, Vol. XXIII. p. 901.



conjectures may be idle or malicious; but no power upon earth can prevent them, so long as the system of the Court makes them intelligible and possible. And is not the dignity of our Court lowered, and its proper influence impaired, by these indecent speculations—which it is utterly in vain to think of putting down by referring to the mere discretion of the Judge?

Besides these objections of mere arrangement and detail, the matter has been taken up on somewhat higher grounds; and it has been urged, that no particular case can be produced where the Judges have abused their powers, or where any mischief has been practically felt;—that the country is satisfied;—and that this question must not be considered as if it related to a detached and simple measure, but must be viewed with reference to all the other parts of the system. There are strong grounds for suspecting that these topics have not been introduced, because they have any fair application to the change contemplated by this Bill, but in order to induce or provoke its friends to begin discussions which are not only complicated, but calculated to create alarm, and to excite unworthy prejudices.

For example, if an instance of actual judicial abuse were to be given, provided it were not so old as to be a mere matter of history, would it not instantly be said that there was a bill which could not possibly be passed without conveying a direct censure on the Judge or the Court referred to? In so far as respects modern times, therefore, the proper answer to this call for cases is, that no time is so good for introducing such judicial safeguards as may be useful hereafter, as those in which the character of living or of recent Judges is beyond all impeachment. At such a time, it is enough to justify the precautionary measure in question, that every Judge has it in his power to do wrong without the possibility of detection; and that, even when his designs are pure, nominations as pernicious as if they had been intended to be bad, may occur from error. And it will be observed, that the requisition for specific instances is the more absurd, that whenever a Judge is really inclined to go wrong, this is precisely the occasion when the crime will be best concealed. There may be some chance of detecting the error of an artless namer of a Jury; but what mortal eye can ever pierce through the hypocrisy of a wicked Judge; or expose the cunning with which, while he may baffle inquiry by saying he is only exercising his Discretion, he may put into the Jury a few persons notoriously favourable to the party he wishes to injure, and thus give the very profligacy of his conduct an air of justness, and even of liberality!

Thank God, this is not the age in which these observations can be stated as applying to any thing that exists. But this call for cases is not sufficiently answered by saying that, in principle, it is idle. Events have occurred, which, although they have now become historical, cannot be lost sight of in thinking of this subject, but ought to be brought more prominently forward, just because, by being historical, they may afford much instruction, without giving any offence. We do not mean to enlarge upon them; but we must beg those who think this part of our judicial system so very perfect as some of our counties profess to do, to reflect what passed in this unhappy kingdom towards the close of the reign of the Stuarts. There perhaps never was in Europe a more frightful and atrocious course of bloody proscriptions and cruel persecutions, than Scotland suffered during the twenty or thirty years preceding the Revolution. One of the most admonitory and alarming circumstances in the history of these horrible scenes is, that, to a great extent, they were acted in our Supreme Criminal Court; that the murders there committed had often the formal authority of a verdict; and that these verdicts were pronounced by Jurymen selected, as at this moment, by the Court. It cannot be denied that these are facts; but it has been said that the Judges, not having the power of appointing the Juries, would not have prevented them from happening. There are good grounds for doubting this; for the opinion of the country was so much against these proceedings, and the whole system of Government was so completely a matter of force, that, if no packing had taken place both before the trials and at them, we are satisfied that such verdicts could never have been obtained. But the true question is, whether the absence of this judicial control over the persons of the Jury, would not have helped to prevent these atrocities?

The best answer to this, is to humour those whose scruples require it, by giving them one actual case, which we earnestly recommend to the attention of all those who imagine that intrigue is invariably excluded from the temples of justice.

In the year 1605, James, the Sixth of Scotland, and First of England, was very anxious to get a conviction of treason against some meritorious clergymen, who had maintained the Presbyterian form of religion, which it was his Majesty's pleasure to suppress. For this purpose they were brought to trial. But Presbyterianism was then, as it has always been, such a favourite with the people of Scotland, and those who stood out in support of it behaved in general with such constancy and devotion that there was very little hope of success from any trial that should be fair. Every honest jury had 'a wonderful doubt.' In

order to remove this obstacle, the Earl of Dunbar was directed to take charge of the case. This person was well fitted for the task, having been Chancellor of the Exchequer in England—deeply engaged in all the affairs of Scotland—the first of his family who had been raised to the peerage, and being, in his personal character, 'a man of deep wit, few words, and in his Majesty's service no less faithful than fortunate. The most difficult affairs he compassed without any noise, and never returned when he was employed, without the work performed that he was sent to do.' Accordingly, he performed this task admirably, and without any noise: For he went to the right place at once, and did the business completely, by merely getting the presiding judge to make a proper use of his authority in naming the Jury. Sir Sir Thomas Hamilton, who was the Lord Advocate, wrote a letter to the King, giving his Majesty an account of the trial, which had by this time ended in a conviction. The late Lord Hailes, in the course of his learned researches, discovered this document, and saw that it was well entitled to a place in his collection of 'Memorials and Letters relating to the History of Britain during the Reign of James the First.' It is too long to be all quoted; but the real operation of the machinery is very candidly described in the following passages. He sets out, by mentioning, 'my conceived fear, that my silence could not find out any lawful excuse, if I should not advertise your Majesty of the progress and event of the criminal pursuit of Messrs. John Forbes, Welch, and others.' The case is then stated 'as a political one, involving the utter subversion of your royal power within this kingdom.' After which, he goes on thus:—'I should omit a point of my duty if I should conceal from your Majesty, that the first and greatest praise of this good success should be given to your Majesty's self, for foreseeing this matter to be of such difficulty and danger: as it required the particular direction of your Majesty's own most excellent wisdom, by the report and prosecution of my Lord of Dunbar, who, I am assured in all his life was never so solicitous for the event of the trial of other men's lives. For, at his here-coming, finding that matter full, not only of foreseen, but also of unexpected difficulties, his care and diligence therein has been so assiduous, wise, and provident, that he made secret choice of this time and place (Linlithgow) which, by the effect, has proved most proper, and lively expressed to your Majesty's Justice, Justice Clerk, and the other members of that Court, your Majesty's care of the maintenance of your royal power, brought in question by that process, with the undoubted favours which they might expect by doing their duty, and most certain disgrace and punishment, if, in their any thing should miscarry. Finding, beside other great impediments, the chief peril to consist in the want of an honest assize, who without respect of popular favours, threatening, or imprecations would serve God and your Majesty in a good conscience; for known default of constancy and good affections in others, he was compelled to cause his own particular and private kinsmen and friends to make the most part of the assize, who, being admitted on the same, if he had not dealt on that point but (i. e. without) scrupulosity or ceremony, to resolve them of that wonderful doubt wherein, by many means, chiefly by the thundering imprecations of the pannel, and contentious resistance of their own associate assizers they were casten;—that whole purpose had failed, to our infinite grief and your Majesty's over-great prejudice. For the good-success whereof, I shall ever thank God, and ever pray Him and your Majesty to put us to as few essays in the like causes, as may possibly stand with the weal of your Majesty's service.'

The commentary of Lord Hailes, himself a judge of the Court of Justiciary, and one of the most eminent who ever adorned it, on this document, is in these terms. 'This letter gives a more lively idea of these times than a hundred chronicles can do. We see here, the Prime Minister, in order to obtain a sentence agreeable to the King, address the Judges with promises and threats, pack the jury, and then deal with them without scruple or ceremony.' He might have added, for this is the proper use of the example, that, in so far as regards the nomination of the jury, the Court of Justiciary is constituted at present exactly as it was then. We trust that days similar to those of the Stuarts will never return. But it is right to take care that, if they do, our forms of trial shall not be so well fitted as they were then for the repetition of such outrages. And lest it should be supposed that nothing but a general corruption of manners and of principle can ever admit of these forms being abused, we shall just give one other example, taken from a later period, but on which also posterity has already pronounced its almost unanimous judgment.

Stewart of Ardsheel was tried at Inverary, in the year 1752, for the death of Campbell of Glenure. He was convicted and executed; but it has always been held that though guilty, he was himself unlawfully slain. And how was this accomplished?—Chiefly by the power which the presiding Judge had in the appointment of the Jury. There had long been an almost deadly feud between the Stewarts and the Campbells. The Duke of Argyll, the head of the Campbells, was Lord Justice General, a nominal office, which did not require him to act at all. But he chose to act;—and the way in which he acted was this:—There were

\* Archbishop Spotiswoode's History of the Church, p. 516.

many persons within the district who were qualified to be Jurors, who belonged neither to the one clan nor to the other. Indeed, an entire and unexceptionable Jury might have been obtained, without taking a single man from the county where the feud subsisted, or the crime was said to be committed. But there were put (whether by him or not, we cannot say), into the list of forty-five, no fewer than *twenty-five Campbells*; and of the remaining twenty, only three were *Stewarts*. Still the whole of both clans might have been left out of the Jury of fifteen, and there were enough to make an Assize. But when the trial began, his Grace named *eleven Campbells*, all from Argyleshire, as part of the Jury. Of the remaining four, not one was a Stewart. The result was what might have been expected. A written verdict was returned, which stated that he was convicted *unanimously*; but it was avowed at the time that three of the four who were not Campbells, differed, and expressed their difference, from the rest, but were overawed; and seeing that their resistance could do no good, where the majority was against them, allowed it to appear as an unanimous verdict, when it really was not. But suppose they had stood out, as they were unquestionably bound to do if they believed the proof deficient;—they might have saved themselves from disgrace; but still, to try a Stewart at Inverary, in the year 1752, before the Duke of Argyle, for the death of a Campbell, by a Jury of which the majority were Campbells, was a mere mockery of justice. There was so strong a feeling throughout the country of the hardships and unfairness to which the prisoner had been subjected, that a dispassionate trial, even at Inverary, was by no means hopeless. But reason and justice, law and form, argument and fact, were all equally outraged and equally vain, where it was known that the Justice-General was to preside, and that he could pick the county for Jurors as he chose.\*

As to the country being satisfied, we deny the fact to be so. It is true, that no public clamour had actually broken out; though, if the nation were polled upon this measure, we fear the country gentlemen would make but a sorry figure. But the quietness with which men, after a certain time, submit to evils to which they have been accustomed, is not to be mistaken for their holding these things not to be evils. This is not a subject calculated to strike the minds of those who are not practically and personally concerned in Courts of Justice; and therefore popular commotion, which is what seems to be wanted, is not to be expected. But we have never heard, among candid and intelligent men, who have had occasion actually to see and to feel how the machine works, any opinion upon this matter but one; not have we almost ever seen a stranger present at one of our criminal trials, without observing his surprise at this part of the proceedings. 'I regretted not having been present' (says a late most intelligent traveller) 'during our residence in London, at some criminal trials; and, having mentioned it, I was obligingly invited to be present at one that took place yesterday, in the Court of Justiciary, for a case of murder. At ten o'clock in the morning, we entered a handsome modern built hall, &c.—and so he goes on describing the whole scene very accurately, till he comes to the naming of the Jury, when he says, 'out of forty-five jurymen present, the presiding judge selected fifteen, from a list he had in his hand, who were empaneled for the trial of the prisoner at the bar. This selection surprised me a little, I own,' &c.—'It seems to me that all persons qualified to serve on the jury should be summoned successively in alphabetical order, and draw lots in court for each new panel.'

Nor are the sentiments of this stranger new to our own lawyers. For in spite of the tendency which all professional men have, to acquiesce in any system they happen to be daily engaged with, there scarcely ever was a period at which this eminent defect has not been pointed out and acknowledged, even by those who were at once best qualified to judge, and most likely to be beset by this failing. The opinion of Sir Thomas Hamilton, the Lord Advocate in 1606, is plain, from his praying God and King James, that he may as seldom be obliged to pack a jury as may be consistent with his Majesty's service. Sir Thomas Hope, who was Lord Advocate under Charles the First and a much more distinguished person in legal practice and learning, indicates the same opinion, by referring, with approbation, to a statute which gave prisoners, in a certain description of cases, a right 'to reject five of the assize upon suspicion of their partiality,' and even going the length of representing this as the general rule of our system.†

\* The reader will find a full account of this shocking case in Howell's State Trials, Vol. XIX. p. 1. It has been said that his Grace was perfectly honest in this proceeding; because, though his choice was unlucky, he did conscientiously believe that the Campbells were the best jurymen. We are not disposed to dispute this; but can any thing show more strikingly the folly of trusting this matter, in which prejudice or ignorance are just as hurtful as direct partiality, to the conscience of any man?

† Journal of a Tour and Residence in Great Britain, &c., in 1810 and 1811, by a French Traveller. Vol. I. p. 361.

‡ Vindication of King Charles II.'s Government.

The feeling of Lord Hailes, as applicable to more recent times, has been shown already;—and, with respect to this later age, we may refer to the positive declaration of Lord Dregghorn, a practical lawyer of great experience—the author of our most valuable collection of Criminal Cases (published in 1774), and long a Judge in the Court of Session. Speaking of peremptory challenges, he says.—'Our practice, however, ought to admit of such challenges.'\* He afterwards explains his reason for thinking so, thus.—'Here, it must be observed, that trial by jury is not upon so proper a footing in Scotland as it might be. Jurors do not come by rotation, but a certain set is summoned upon every trial. There is no law in this country, as in England, allowing the prisoner a power of challenging a certain number of the jurymen, without assigning any reason; and the judge selects the fifteen, a petit jury, from the forty-five; a power which may often be abused.' &c.† He gives two instances of the bad effects of this system, with one of which he was personally acquainted; the other he had only heard of, but plainly on authority which he believed. 'This last was the case of a prisoner, who saw, on the list, the name of a man with whom he had long been on very bad terms.' He made his counsel speak to the Judge about not naming this man. 'His Lordship said, he would think of it, and make inquiry about the man.' The result was precisely what must happen in most such cases, where a Court imagines that it can ever investigate these things with the success of those who are personally concerned. The juror was found to be in a respectable station of life, and this was thought enough. 'Next morning he acquainted the counsel, that he was assured this man was a very intelligent person, and very proper to be put upon the jury.'—'The consequence was fatal to the panel. All the rest of the jurors, or at least a majority of them were for acquitting him, and a vote passed to that purpose. Upon which this man fell to work, and, by various means, prevailed on the jury to alter, and sign a verdict contrary to their first opinion. This he accomplished by the great influence he had over them; which was owing to his being a man of superior rank and abilities, and to his being factor on the estate of a great lord in the part of the country, whose tenants the rest of the jurors were.'

But all other opinions on this subject are superseded by the authority of one, who, of all who ever lived, had the best opportunities of knowing the exact use to which this power of the Judge was capable of being converted. We allude to Sir George Mackenzie, the Lord Advocate of Charles the Second and of James the Seventh,—a man of learning, ability and experience, who was himself a party in most of the transactions, both political and judicial, which are thought to have stained the character of his age; who was particularly versant in the practice of our Criminal Courts, on which he wrote a valuable treatise; and the whole of whose bias was in favour of those views which are natural to a Crown lawyer. This person states, in his Vindication of Charles, that of old the Lord Advocate had the privilege of naming the Jury; whereas he prevailed on the Scotch Parliament to give it to the prisoner, by vesting him with a great number of peremptory challenges. 'Of old, the King's Advocate had the naming of the Jury, as being presumed disinterested; yet Sir George Mackenzie prevailed to get an Act of Parliament, whereby the nomination of the Jury was referred to the Judges. Fifteen of these forty-five only are admitted a sufficient Jury; and the defendant is allowed to challenge or reject, without giving any ground or reason for it, any thirty that he pleases of that number; and the fifteen who remain make the Jury, and are set by the Judges.'‡ We are perfectly aware that this statement is altogether deceptive. Whatever was the case 'of old,' the Lord Advocate, in his day, had not the power of naming the Jury; and Mackenzie did not get such a statute passed, which would have thrown the nomination entirely into the hands of the prisoner. The truth is, that there was never such an act;—and in his time the Judge named the Jury just as he does now. But it is these very circumstances that give peculiar force to his testimony. For if the nomination by the Judge be so excellent a system, and so little liable to be abused, why did he not explain its merits manfully, and rest his defence upon it? But he is vindicating himself and his Royal Master, from the imputation of having prostituted Courts of Justice, for the attainment of political ends. He plainly felt that the mode of nominating the Jury, which was the same then as it is now, was so defective that it had enabled him to get many things done which required defence, and, instead of justifying the system, he claims merit for having fairly abandoned and changed it. There is no doubt that this apology proceeds upon his confounding what he thought right, with what he had done; but still it is edifying to see the Scottish counties, under the direction of the Lord Advocate of George the Fourth, landing and upholding that very peculiarity, which the Lord Advocate of Charles the Second selected as the proper subject of censure, and even went the length of inventing, or imagining a false statement, in order to make it appear that he had the merit of abolishing.

\* Major Patriots, p. 352.

† Criminal Cases, Introduction, p. 29, Note.

‡ Ib. p. 527.



# ASIATIC DEPARTMENT.

—669—

## Indian News.

We regret that the most recent intelligence which we have to offer under this head should be of so melancholy a nature. We received on Saturday evening, but too late to be included in Monday's Paper, a Letter from Burrissaul, conveying the most afflicting details of a calamity that has befallen the District of Backergunge; and the accuracy of the information it contained, has been corroborated by subsequent Letters from the same quarter, addressed to the other Papers. Such a visitation has scarcely ever before been felt, we should imagine; and it will require all the energy and attention of Government to prevent the most awful consequences from ensuing. We give our Correspondent's Letter in his own words:—

*Burrissaul, June 9.*—It is impossible to describe the present sad condition of this District, occasioned by a most terrible inundation that happened on Thursday night last. The spring tides were unusually high; a most violent storm having blown all day from the S. E. Towards the night the wind changed to the South, and the weather continued thus impetuous the whole night the water continuing to rise. A great many houses were blown down, and much more mischief was done; but it was trifling in comparison to that which followed, for the bund not being able to resist the violence of the river, whose waves rushed many feet over it, gave way, and in an instant the whole face of the country was overwhelmed. The water even upon the roads was 6 feet higher than the river. Whole Villages have been swept away, and a great many Natives, with abundance of cattle, drowned. We were obliged to take refuge on the tops of our houses in our palanquens, which were well secured with strong ropes, having previously provided ourselves with food, &c. in case necessity should oblige us to remain there any length of time; but such was the fury of the storm that had it lasted another day, the houses could not have withstood it, and we must inevitably have perished; and, indeed, there appeared every probability of the waves washing over us, the spray was scattered like rain around, and the wind blew with increasing violence. Not a Native house to be seen around us, the longest trees were torn up by the roots, and carried to some distance. The banks of the river are covered with human bodies, and an innumerable number of dead animals. The whole of the Station, with its bazar, is one scene of ruin; in a word, the misery and desolation is greater than can be expressed. Much, we fear, however, that the distress will not stop here. The Natives have lost every thing, and there are but a few maunds of rice saved from the general wreck. A famine, without some powerful efforts are employed to prevent it, will certainly ensue, and dreadful as it is in anticipation, how much more so will be the reality. We ourselves are badly off, having lost nearly the whole of our live stock.

The reports which are continually being brought in from the different Thannahs in the District, are most melancholy; and those Villages, situated on the small islands, must have inevitably been swept away. Information is just brought in from Backergunge and Nolchitney, the two principal repositories for Grain, that every house has been carried away, and there are but faint hopes of any paddy having been preserved in the Golahs.

Yesterday evening we received Monday's Dawk, which ought to have arrived here on Friday morning. As the weather is now clearing up, we expect to-day to receive Tuesday's and Wednesday's Dawk. It rained and blew unceasingly all yesterday, and to-day the weather continues the same, though somewhat calmer; and we trust now, that we have seen the worst of this dreadful storm.

The following are additional details on the same distressing subject, published in the Papers of yesterday:—

*Letter from Jessore.*—Ten days ago, my Indigo prospects were promising beyond any thing I could have calculated upon. Since that period, the most violent hurricane ever remembered in this quarter, accompanied with a deluge of rain, has destroyed full one half of our plant, and rendered the recovery of a great part of the remainder precarious. The storm lasted 48 hours, and swept houses and every thing before it. Many trees were

torn up by the roots and carried to a distance of several feet. I never witnessed such a scene of devastation as this place presented. The rain continued almost without intermission for 4 days after the storm ceased, so that the whole country is under water. I have just seen a letter from the acting Magistrate at Burrissaul, about 120 miles to the Eastward of this station, detailing the effects of the late storm, which commenced there on the afternoon of the 7th. I scarcely ever perused a more melancholy account. Burrissaul is situated on the banks of the Megna, which river from the fury of the winds, broke over its boundaries in every direction, and inundated the whole country to an alarming depth. The river rose so rapidly, that on the 8th at night, they had upwards of five feet of water in their houses; and the current was so strong, that the doors and windows were burst open, and a regular rush of water set in through the houses. This gentleman says he contrived to get two palankeens to the top of his house, and retreated thither with his wife and children as a last resort. The Register's and Doctor's houses were carried away, or at least fell in from the violence of the storm: nearly the whole property of the Residents at the station was destroyed. Had this been the extent of the damage, however, it would have been a little consequence comparatively speaking; but, alas! the sufferings of the Native inhabitants are not to be described. No fewer than one lac of lives are said to have been lost on this occasion, together with the whole of the cattle and grain of every description both in store and what was on the ground. The dead bodies were floating in every direction, and carried with the current thro' the houses. The writer states, that no rice was to be procured, even for the prisoners, and that he felt he should be obliged to release them from the Jail, otherwise they must starve. From what information he could obtain, the district could not supply food for ten days' consumption to the inhabitants who have escaped this dreadful visitation. I should think the writer meant to include in the lac, the lives of the cattle lost, altho' I would certainly infer from the letter, that 100,000 human beings perished. I have not heard if the storm reached beyond this district to the northward and westward.

Government have been applied to in behalf of the unhappy survivors of this terrific visitation of Providence. We have no doubt but with their wonted liberality, they will do every in their power to help and to alleviate the condition of the poor creatures. We are much afraid (though we have as yet heard nothing from that quarter) that the late storms may have extended their devastating influence to the Island of Saugor.—*India Gazette.*

*Backergunge.*—It is with deep regret that we have to communicate to our readers (from private letters that reached us yesterday,) a dreadful visitation of Providence that has fallen on the zillah Backergunge. On the 6th instant, they had a most violent hurricane at that station, which continued till 2 o'clock of the morning of the 7th, when it changed to the South East, and blew if possible with still greater violence. The water rose with such rapidity, that the Register we understand, was barely able to remove to the top of the house, before it was filled with water. The scene became then most awful and appalling. Not a vestige of a Native house was to be seen as far as the eye could extend; the whole that had escaped the violence of the wind, having been swept away by the force of the current. The whole country appeared as one vast ocean. The accounts from Burrissaul are stated to be more dreadful than any thing that can be imagined. The Register was obliged to have a Palanqueen put at the top of the house for his wife, as there were five feet water in the house. Dead bodies were seen floating in all directions. At the station there were no less than a thousand poor creatures drowned, and the whole district was suffering in the same proportion, so that it is supposed that a hundred thousand poor natives, have been swept into eternity!\* Indeed it is believed that the greater part of the population must have been destroyed. No provisions of any kind were procurable, so that those who escaped the flood, were likely to die of hunger. An application we understand has been made to Government to send up immediately, supplies of grain to that district, as they had not the

\* This is actually stated in one of the letters we have seen, but the number must surely be exaggerated.

means of keeping themselves alive for ten days. Their prospect is represented as deplorable in the extreme, as the greatest part of the bullocks and seed corn had been entirely destroyed, and consequently but a small part of the usual quantity of land can be tilled. No accounts had been received we understand from the different Thannahs in the District, but there was reason to apprehend that the effects of the inundation were most fatal in the Islands at the mouth of the Megna. The following letter on the subject is from a Native.

**Backergunge.**—Extract of a letter from a Native from Backergunge:—"In the middle of the night of Thursday the 6th instant, the Burrisol River swelled so as to cover all the houses of the Town and neighbouring Villages, and there can be no estimate formed of the mischief and loss of the life that ensued. The water was seven (hâts) cubits above the level of the Town, and destroyed every thing—all the records of the Collectorship and Court have either been washed away or destroyed—the pukka houses are very much injured though not actually knocked down—water is still in them.—The furniture in the lower parts of the houses is spoiled—all the chuppered houses are washed down.—The Register was in a lower roomed house, and with his Lady was very near been drowned—they were saved with difficulty—his house is still under water—a bungalow with all the trees in the ground belonging to it, were washed away.—We only saved one suit of clothes each—I and others were suddenly up to the neck, in water, and for the whole night of Thursday and until the noon of the following day we continued in that state, when the rain began to abate, but we all expected to die.—We got nothing to eat until Saturday—then with great trouble we obtained two rupees worth of rice, 32 seers, and with the leaves of some vegetables that grew on a mound close by, we continued to support life—on Sunday, that is to day, we have been unable to get any rice at all—we have been eating coconuts and jacks—we hear the price of oil and salt is nominally two seer for the rupee, but we cannot get it at that price without difficulty.—Of the Inhabitants of the Town who contrived to save themselves, most have gone away in different directions. Bureenal being now a *Mydan* nothing can be done here for a month. It will be necessary to build much, but there are no materials or labourers. For a distance all round as far as two *Pukurs* travel goes, the inundation is the same; I have heard nothing of Edulpoor or Mazirpoor. It has rained on till to-day, but the River has subsided so as to leave the ground visible here and there. The mischief that will have ensued on the Churs and Islands of the Megna cannot be guessed, as soon as the storm subsides I shall send people in a boat to ascertain. Many of the Prisoners in the Jail were drowned.

**Dacca Zillapore.**—Our letters from Dacca Zillapore give mournful accounts of the storm:—Extract of a letter from the Neighbourhood of Fureidpore, dated 7th June:—"Yesterday morning was cloudy; the afternoon rainy. At seven p. m. a most violent storm, accompanied with all its horrors, and a most dreadful hurricane arising from the S. S. E. drove towards us the floods of the Megna. The river on which I am situated rose twelve feet perpendicularly in the space of three hours. The whole country is under water. The river is at its height; that is to say, at the point which it usually does not reach till the end of August or September. The face of the country is a perfect Ocean; all our Establishments overflowed, and the waters, up to the door of our Bungalows. The fields of Indigo, high and low, are overflowed. We have not a Beegah of plant but is submerged by the violence of the wind, rain, and inundation. Our losses are irreparable; and the ruin of our cultivation complete. We have in the room of all our abundant hopes, only the stalks of the plant deprived of all its leaves. I cannot tell my feelings at the melancholy scene before us—trees torn up by the roots—houses destroyed—dead animals of every description strewn over the fields—all our carriage cattle, and manufacturing utensils killed and destroyed.

June 10.—I could not send off my letter for the continued rain and inundation which has cut off all communication. Now I can merely repeat a continuance of the same horrors.—*John Bull.*

## Letters from the Dekhan.

**Indian Fortification.**—An Officer of the Madras Engineers, at that Presidency, we hear, has finished, and is going to send home, to be published, a very interesting work, on Indian Fortifications, which will add another, to the numerous, and interesting works, which the late Campaigns has given birth to.

**Dooab, in the Southern Mahratta Country.**—We understand that the late march of the Field Force, under the Command of Colonel George Molle, of His Majesty's 46th Regiment, from Belgaum, was occasioned by the refusal of Chintomun Roor, to deliver up, to the Political Agent, the person of Bapjee Punt Gokla, the reputed murderer, of the Vaughans, who was living under his protection.

At the period the Force marched, Chintomun Roor was on his return, from the Southward.

Colonel Molle, with the Head Quarters of the Force, and a Detachment of His Majesty's 46th Regiment, 2d Battalion 2d Regiment Native Infantry, and Light Field Train, left Belgaum, on the 10th March; at Darwar the Colonel was joined by the 2d Battalion 4th Regiment Native Infantry.

Colonel Walker, with the Kulladgee Detachment, consisting of the 2d Regiment Light Cavalry and 2d Battalion 19th Regiment Native Infantry, moved, on the 12th instant, from that Station. The two Forces united by forced marches, at the Village of Moolgoond, on the morning of the 14th, within 5 miles of Sherutty, where Mr. Stevenson, the Political Agent, also joined the Head Quarters of the Force.

Sherutty is a small, but strong little Fort, near which Chintomun Roor and his party lay encamped.

Here the necessary communications were made to this turbulent Chief: and after a time, he consented to give an order, addressed to his Son, at Sanglee, to deliver up Gokla.

On which Colonel Molle moved back, via Darwar, on Belgaum: leaving Colonel Walker's Brigade, encamped within a short distance, to prevent that Chief's moving; before the person of Bapjee Punt Gokla should be delivered up.

Information appears to have been received by Mr. Stevenson shortly after, that Gokla had been delivered to the Guard, sent for him to Sanglee; on which Colonel Walker's Force fell back, on Kulladgee.

This is the second time this Chief has caused the Government to move the Field Force against him, by his contumacious conduct. It is hoped that the continued clemency shewn towards him; in consequence of the former services of his family, may have a proper effect on his future conduct, or perhaps he may find a *third time* that Government may not be inclined to pass over his conduct in a similar manner.

**Darwar, April 23, 1822.**—A Detachment of the 2d Battalion 19th Regiment Native Infantry arrived here on the 19th instant, from Kulladgee, to relieve the 2d Battalion 4th Regiment Native Infantry which marched on the 21st instant, for Cannanore, under the Command of Major Jollie (late Assistant Adjutant General of the Madras Nagpore Subsidiary Force; and who formerly held a similar situation in this Division). The departure of this Corps is universally and deeply regretted, perhaps there is not in the whole Madras Army a finer body of men, a better disciplined Corps, or a more friendly, social, and hospitable body of Officers.

The 5th Madras Native Infantry is expected from Candeish to garrison Darwar, and the subordinate Forts dependant on it.

We hear that Colonel Russel of the 5th Madras Native Cavalry, commands now at Sholapore; and that the 3d Bombay Native Cavalry are shortly expected at that Station, to relieve the former Corps.

**Bapjee Punt Gokla.**—Lieutenant Downing, 2d Battalion 2d Regiment Native Infantry, marched with an escort, from Belgaum, on the 22d of April, to Darwar, to take charge of Bapjee Punt Gokla, a state Prisoner proceeding to Poona, where the sentence



that has been passed on him, is to be carried into execution. Some say that the fate of the Vaughans awaits him there, others seem to think perpetual imprisonment is to be his lot, in Walsotta, or some other Hill Fort.

*History of the Mahrattas.*—We hear that a History of the rise and fall of the Mahratta Empire may shortly be expected, from the pen of an Officer of the Bombay Establishment, holding an important Diplomatic situation in the Southern Mahratta Country.

*Asserghur, May 21, 1822.*—A Company from the 2d Battalion 16th Regiment Native Infantry is at present detached at or near Rawere in Candiesh, to quell a disturbance which has arisen amidst the Bheel gentry who inhabit the Hills within a march or two from Rawere. We have lately experienced very unsettled and unpleasant weather here. The wind blows from all the cardinal points during the course of the day, therefore unless one has Tattees at all the doors of one's Bungalow, it is impossible to keep one's self in a tolerably moderate state of temperature; but should a man think of enjoying the necessities of the East (I say necessities, for as yet I have not found out the luxuries) in having tattees to all his doors, they would make a pretty hole in his pocket. The other day, on enquiring the price of khushkus at Berhampore, I ascertained that it was for sale at Two Rupees per Seer, but those Officers who have made up tattees here have not patronised this imposition, for they have sent their servants for it to Hurdah, where it is to be procured with great trouble, labor, and expence, but in comparison to the price of it at Berhampore the expence is unimportant. Our Battalion has lately undergone an Inspection by our Commandant, and elicited his praise for our fine performance. A Copy of the Garrison Order he issued on the occasion I do myself the pleasure of transmitting you, and I hope you will give it a corner in your JOURNAL when you can spare so much room for it. At the inspection there were only four Officers present, namely, Captain Lister, Commanding, Lieut. Richmond, Adjutant (whom the Colonel has very justly commorated, for he is indefatigable in his duty), Lieutenants Steer and Halhed, Two Officers were on the Sick List (Ensigns Watt and Wilson) and one on Command (Lieutenant Haldane.) The Doctor, by the way (Doctor Inglis) was present at the Inspection. I am glad to see that a very able hand has taken up his pen at this Station of late, and favored the Public with some interesting accounts of the neighbouring Country, and I hope he will not flag in his promise of a further benefit intended on the score of the Bheels. Were other people at other Stations to follow his good example, many a hand might derive great advantage from it; but folks in general are too fond of keeping all their knowledge to themselves, and of assuming more wisdom than their neighbours to think of gratifying my wish in this respect.

*Extract of General Orders, issued by Colonel Richards, Commanding Asserghur, Monday, May 13, 1822.*

"Lieutenant Colonel Richards, having finished the Inspection of the 2d Battalion 16th Regiment of Native Infantry, has much pleasure in stating the satisfaction he derived from finding it in such good order in every respect, which is chiefly attributed to the attention paid to its discipline and interior management by its Commanding Officer, Captain Lester, assisted by the Officers of the Corps, especially the Adjutant, Lieutenant Richmond, which the Commanding Officer will have much pleasure in bringing to the notice of Colonel Adams, C. B. Commanding the Division."

#### Deaths.

On the 11th instant, Miss ELIZABETH MYERS, aged 23 years and 9 months.

At the New Anchorage, on the 4th instant, Mr. PATRICK LINDESAY, second Officer of the Honorable Company's Ship SIR DAVID SCOTT, aged 27 years.

On the 5th instant, at Culwar House, Shahabad, ANN MARIA, the youngest Daughter of Mr. JAMES HAYELL, aged 13 months.

### Polyglot Signals.

To the Editor of the Journal.

SIR,

In your well conducted JOURNAL of the 1st instant, I read a paragraph taken from a Liverpool Paper, which states that Lieut. Burton, of the Chatham Division of Royal Marines, has submitted a plan of Polyglot Signals to the Admiralty.

As the Liverpool Editor expresses his astonishment that it had never been thought of before, I take the liberty to refer your numerous readers, to the Society of Arts Session for 1817; there they will find, that its medal was awarded for an Essay on Universal Telegraphic Communication: Capt. J. Willson, of the Royal Marines in 1809, dedicated his Soldier's Friend, (by permission) to His Royal Highness the Commander in Chief; it is in six different languages, namely, English, German, French, Italian, Spanish and Portuguese; this is another proof that Lieut. Burton's plan has been thought of before; and further, the Philanthropic Code, with a Numeral Concordance or Key to the languages, published here in 1821, and now in your Library, will be sufficient to convince any one that Polyglot Signals did not originate with Lieut. Burton, whose ingenious and benevolent exertions towards promoting a reciprocal understanding between nations of different languages, by the most simple and economical means, will, I trust, meet that encouragement from every Government and the Mercantile world which they are eminently entitled to.

A perfect Polyglot Code, comprising the English Vocabulary, with appropriate Sentences, which may be readily expressed by Signal or pointed out by number in the Vocabulary, would do more for the promotion of Commerce, Civilization, Science and the diffusion of useful knowledge, than any other plan hitherto acted on; that the plan is practicable and the great object to mankind may very soon be obtained, is sufficiently explained in the Preface of the Philanthropic Code, from line the 13th to the 21st.

SIGNUM FERRO.

### Episcopacy and Presbytery.

SIR,

To the Editor of the Journal.

What does the LAYMAN mean by requesting you to republish the long Ordinance and Preface, which appeared in yesterday's JOURNAL? The Ordinance of the Lords and Commons, passed in the height of the civil war between the Parliament and Charles the 1st, only expresses the opinions of a part of the nation. The measure pursued in 1660 for reversing all that had been done, and bringing back Episcopacy without any limitations, shewed that the sentiments of a very large proportion of "Englishmen in the seventeenth century" were as decidedly in favour of that form of Church Government. The millions of Dissenters now existing in England show that the same diversity of opinions on this point subsists still. At the same time the champions for Episcopacy and Presbytery have become more tolerant, and less positive of the divine origin of their respective forms.

In this country, where there is every reason to suppose that for the next century at least the Christians of all sects will have employment enough in converting the Natives to our religion, it seems somewhat premature to commence discussions about Church Government of converts yet unborn. As yet there is room enough for them all; and the Clergy and Missionaries have more important business in hand. We do not read that Clive and Lawrence wasted their time in discussions about the Perpetual Settlement or the Adawlat Systems, which the result of the struggle might afterwards render expedient. They left this task for the Cornwallises and Wellesleys of the next age. You expressed sometime ago a judicious intention to keep *Polemics* in general out of your Paper; and I regret that the learned length of the LAYMAN's quotations should have induced you to depart from it. They filled a space which I apprehend most of the "Englishmen of the nineteenth century" who are in India will think might have been better occupied.

July 16, 1822.

A SUBSCRIBER.

**Imaginary Distresses.***To the Editor of the Journal.*

SIR,

I was much amused with reading over the Imaginary distresses of "ONE OF THE SUFFERERS" in a late JOURNAL, and as in my opinion the Bengal Adjutants are extremely well paid for their trouble, you will excuse my hazarding a few remarks upon their superabundance.

At Madras, an Adjutant (supposing him to be a Lieutenant) receives the following pay, which is to include the expence of maintaining two Horses, without which, no Adjutant can do his duty in an Officer-like manner.

Pay and Allowances of Lieutenant,....	Rs. 200	0	0
Adjutant's Allowance,.....	132	0	0
<b>Total</b>	<b>332</b>	<b>0</b>	<b>0</b>

To which we may add 2-5-4 for a Company, supposing the Adjutant entitled to command one in his own right, which is not always the case, but depends upon his standing in the Regiment.

The Bengal Adjutants, according to your Correspondent's statement, receive 482 Rupees, and yet it seems, more is required! I can only say that this appears to me so unreasonable, that were a Correspondent on our side of India to express himself dissatisfied with such a munificent allowance, a doubt would be immediately started as to the soundness of his intellectual faculties.

I hope "ONE OF THE SUFFERERS" will take the trouble to glance over this letter, which will, I doubt not, convince him that Bengal Adjutants have not quite so much reason to complain as he imagines, and still less has "AN INTERPRETER AND QUARTER MASTER" to fancy himself ill-paid.

I remain, Sir, Your most obedient Servant,

Not 1000 Miles from Chicacole.

SCRUTATOR.

**Useful Information.***To the Editor of the Journal.*

SIR,

Should you deem the following piece of useful information worthy a place in your truly useful Paper, you will, by publishing it, oblige

Your humble Servant,

June 17, 1822.

SAURIN.

**PLACES OF THE GREATEST SAFETY IN THUNDER STORMS.**

In case a thunder-storm were to happen while a person is in a house not furnished with a proper conductor, it is advisable not to stand near places where there is any metal, as chimnies, gilt frames, iron casements, or the like, but to go into the middle of a room and endeavour to stand or sit upon the best non-conductor that can be found at hand, as an old chair, stool, &c. "It is still safer (says Dr. Franklin) to bring two or three mattresses or beds into the middle of the room, and folding them up double, put the chair upon them, for they, not being so good conductors as the walls, the lightning will not choose an interrupted course through the air of the room and the bedding, when it can go through a continued and better conductor—the wall."

Dr. Priestly observes, that the place of most absolute safety must be the cellar, and especially the middle of it; for when a person is lower than the surface of the earth, the lightning must strike the earth before it can possibly reach him. But where it can be had, a hammock, or swinging bed, suspended by silk cords, equally distant from the walls on every side, and from the ceiling and floor above and below, affords the safest situation a person can have in any room whatever, and what indeed may be deemed quite free from danger of any stroke by lightning.

If a storm happens whilst a person is in the open fields, and far from any building, the best thing he can do is to retire within a small distance of the highest tree or trees he can get at, he must by no means go quite near them, but should stop about fifteen or twenty feet from their outermost branches; for if the lightning should fall thereabout, it will very probably strike the trees; and in case a tree was to be split, he is safe enough at that distance from it: besides, according to the repeated observations of Signior Beccaria, the lightning by no means descends in one undivided track, but bodies of various kinds conduct their share of it at the same time, in proportion to their quantity and conducting power.—*Cheap Magazine.*

**Bank of Bengal.**

SIR,

*To the Editor of the Journal.*

I see by the Papers that the Directors of the Bank of Bengal have applied to Government for permission to double their Capital, upon an experience I presume of the inadequacy of the Bank means to supply the few necessities of the Public.

Admitting, on the word of the Directors, that inconvenience has been felt from the limited operations of the Bank in a degree to justify their representation to Government, I would beg to submit, whether this inconvenience may not rather be attributed to the manner in which the Bank resources have been managed, than to an insufficiency of Capital.

According to the Charter of the Bank, the amount of its Debts may not exceed the amount of Capital. Then I beg to know how it can obtain any Banking profit, or with respect to such a Regulation, where is the utility of Bank machinery? It may be said that a part of its Capital is vested in Government Securities, the interest from which goes towards the Dividend. Then the amount so vested is not employed in Banking Business, but is to all intents and purposes, a Loan to the Government. Neither is this appropriation of its Funds necessary, as I shall attempt to shew presently, to furnish the Security which the Government by Charter requires for aiding the circulation of Bank Notes.

**BANK CAPITAL 5,000,000.**

The Bank permitted to issue Notes in the proportion of one-third Cash Balance to the Issue. Then upon the amount of Capital, the Bank may issue 1,50,00,000; which amount of Paper, I consider to be more than sufficient for the fair demands of the Public, and quite as much as the Government with reference to its own interests would desire to have in circulation.

The Bank grants accommodation thus:—

Upon Deposit of Government Securities ..... 100,00,000

Upon Commercial Credit or good Bills ..... 50,00,000

In order to provide the amount of Security required by Government for the Notes accepted at the Treasury, say 50 Lacs, the Bank surrenders 50 Lacs of the Government Securities, which it would have received on Deposit for Loans granted; and as Security for the amount in circulation with the Public (100 lacs) the Bank would hold 50 Lacs of Cash, 50 Lacs of Government Securities, and 50 Lacs of good Bills.

If the possession of the above Assets does not afford sufficient assurance of solid solvency, upon the scale of business assumed, I am at a loss to conceive what would be enough.

**Marriages.**

On the 17th instant, at St. John's Cathedral, by the Reverend J. PARSON, A. COLVIN, Esq. to ELIZABETH, eldest Daughter of JAMES COLVIN, Esq.

On the 15th instant, Mr. JNO. ARNATON VERTANENS, Assistant of Messrs. CRUTTENDEN and Co. to Miss B. JACOB, youngest Sister of Mr. CARRAPIET JACOB, of this place.

**Birth.**

On the 14th instant, Mrs. P. SUTHERLAND, of a Son.



# ASIATIC DEPARTMENT.

—673—

## Military Order of the Bath.

To the Editor of the Journal.

SIR,

I was some time ago present at a long argument and discussion, whether the above Order was in reality, one of Military Merit only, or one of Rank and Interest. I did not then feel very competent to give any decided opinion on the subject, but the frequent allusion made to its just and impartial distribution on the occasion of the late glorious war in this country, in support of its being solely one of Military Merit, led me to take the first opportunity of perusing with much attention, not only Colonel Blacker's and Mr. Princep's Narrative of the Campaign, but every Official Government and General Order published during the war. Having now done so, I take the present mode of communicating the result of my enquiries to many of the party there engaged in the argument, now at distant and different stations, namely, that it is in my opinion a Military Order of Rank and Interest, and not solely of Merit. As a Soldier of the Indian Army, I feel much pride in the distinguished part many of the Honorable Company's Officers acted during the Campaign, and had even entertained hopes, that honours might hereafter await myself (although totally without interest) should I be fortunate enough to establish a just claim to them; but I no longer indulged vain hopes on finding that two of the most distinguished Officers in the late war were not included in the distribution of this Military Order: Captain Fitzgerald of the Bengal Cavalry, and Captain Staunton of the Bombay Infantry.

The well timed charge of Captain Fitzgerald stands conspicuous amongst the many brilliant exploits achieved in the Campaign. It was generally allowed to have given the turn to the tide of success on this day; and consequently to have mainly contributed to the salvation of our interests within the Nagpoor dominions; to say nothing of the effect on public opinion, that would have been felt throughout India, even to Nipal, had Appa Sahib succeeded in cutting off this Brigade.

Glorious as his conduct was, and of such incalculable importance in its consequences at that critical period to the British character and interest in the East, I find by the Rules of the Military Order of the Bath, which abolished Medals, that he belongs to a rank in the Army, now totally out of the pale of that Order; yet he held a rank that few Officers in the Indian Army arrive at under fifteen or eighteen years' service, and scarcely ever exceed under two and twenty, in a country where Captains are as often in command of Battalions in the field, as Majors or Colonels are, and so frequently the scene of war that in all probability they see more service in half that period than many a Grand Cross of the Bath ever did.

The case of the Officer I allude to of the Bombay Establishment, is still more remarkable. Want of merit could not apply to him, as all will acknowledge, who peruse the following extracts I have copied from some of the numerous Official Government and General Orders, published not only in the Indian Newspapers, but in the LONDON GAZETTE.\*

\* (As the Government Orders, guarding the highest praise to Captains Fitzgerald and Staunton for their brilliant services are well known to all Military Readers, we have omitted their repetition here, as unnecessary to the argument of the Writer, and tending only to prove what no one can dispute, their high and well earned reputation. We proceed therefore with the Letter.)—Ed

Although I am very hostile to exaggerated praise on those occasions, particularly from constituted authorities, and agree with Colonel Blacker in attributing it to that common quality of the human mind, so likely to lead to such an error, when under the influence of admiration; yet on reference to the circumstances, it is by no means so overrated as it struck me in the first instance. The list of killed and wounded in a victorious Detachment, is the best criterion to judge by, and that I find was great indeed, more than one third of the Native part of the Detachment, and of the European only three Officers and six

men left out of eight Officers and twenty six men. But what in my opinion does the Commanding Officer more credit than any thing else, is, as Colonel Blacker justly describes it, his unembellished official report of the battle, clear as it is modest, which from the intelligent must ever command admiration.

Now I would ask those gentlemen who so decidedly maintained the Order of the Bath to be an impartial Military Order of Merit only, adducing the late war in proof of it, what possible reason, but want of interest at home, added to the absence in the authorities there of any exertions to distinguish or reward Military Merit without Interest, could have prevented this Officer from being included in the honours of the Bath. Since his promotion, I find by a reference to the Army List, that Captain Staunton, who commanded at Corygaum, was promoted to a Majority in his own gallant Regiment of Grenadiers, soon after that Battle (15th April 1819), now more than 3 years ago. I likewise observe, he must have been at least twenty years in the Service, when he gained that great victory, so eloquently described, and highly complimented, in the British House of Commons, by the Right Honorable Mr. Canning, President of the Board of Control, on moving a vote of thanks to the Indian Army. The following paragraph copied into your JOURNAL of the 27th January 1820, is from a Bombay Paper, after describing the ceremony of a sword being presented to him from the Court of Directors, by the Gallant Governor of that Presidency. 'Although not much acquainted with Military Orders of Merit, we cannot help thinking it very extraordinary that an Officer, who on this occasion wore the Seringapatam and Egyptian Medals should not be eligible to share, even in the lowest rank of the Military Order of the Bath, although he obtained so glorious a victory as that of Corygaum, nearly twenty years after he had gained the former honourable badges of distinction in the service of his country.'

I perceive that many Officers, whose rank did not at the conclusion of the campaign, by the wise and just rule of this Military Order solely of Merit, render them worthy of being included in it, have since, on chance promotion making them so much more deserving of its honours, been brought in. A very recent instance I shall mention: The Brevet of August last, included a Captain of the Madras Commissariat amongst the Majors; he was immediately Gazetted a C. B. Although I by no means would infer that the Officer in question is not highly deserving of it, yet it seems to me, a total stranger to all the parties, and judging only from a very recent perusal of the events of the campaign, perfectly unreasonable to call it an impartial Military Order of Merit only, where so many have obtained it, whose names I have scarcely met with in the History of the War, while those of Major Staunton and Captain Fitzgerald appear in so very distinguished and conspicuous a light. I should however, imagine, under their circumstances, it must be a matter of perfect indifference to either of those gallant Officers not being of such an Order, when the former recollects that the Monument erecting at the public expence, on the Field of Battle at Corygaum, to commemorate that event (vide description of laying the foundation stone in the ASIATIC JOURNAL for October 1821.) will hand his name down to posterity, as the History of India must that of Captain Fitzgerald, when many a G. C. B. will be totally forgotten. The only mark of distinction that could be conferred on them by the Superior Authority in this Country, was that of Honorary Aid-de-Camp to the Governor General, and for this they were selected from amongst the whole Army, without considering their rank, interests, or influence, with that true Military feeling, that has ever distinguished the high minded and most noble Soldier at the Head of the Indian Army and honour they may well feel more pride in than many obtained, by very different means, from other sources. I shall conclude, by expressing a hope, that the two Gallant Officers (total strangers to me—never having seen either of them) whose names I have taken the liberty of making so much use of, in support of my argument respecting the Order of the Bath, will not feel annoyed on the occasion. I have asserted not a word regarding them, that has not long since been officially published to the

world, consequently trust no impropriety can be attributed to me, for selecting two such very remarkable instances in proof of the folly of any one maintaining it to be Military Order of Merit only.

I am, Sir, your obedient Servant,

Guzrah. AN OLD INDIAN.

### Government Stud.

To the Editor of the Journal.

I have lately had an opportunity of seeing the Honorable Company's Stud; and have been highly gratified. The improvement that has taken place does great credit to the Superintendants; and proves the soundness of Mr. Moorcroft's judgement in introducing the English, in preference to the Arab blood. Instead of the slimy, washy, vicious race formerly produced there, and which would very soon have made the name of "Stud-bred" a sure impediment to sale, we have now a fine tempered, bony, substantial breed, admirably adapted to Cavalry, and far superior (as is generally acknowledged by experienced Cavalry Officers) to any race of Horses procurable from Native merchants.

I saw between 3 and 400 of these cattle, all from 3 to 5 years old, fed to water; and though all were in high condition and full of spirits, not one of those who happened to break loose attempted to fight with his neighbours. I question much whether an equal number of quiet *entire* horses, could be produced from any stud in Europe.

Amongst these were a number of thorough-bred colts from English and country bred mares, destined for stallions. These were for the most part handsome and gentle, and generally large and powerful. There is however in my opinion one grand fault peculiar to all the produce of this country, as well to those of the Stud, as to those of all other breeders, not excepting Mr. O'Keefe even, the most successful perhaps of any. I mean that the *length* of the animal is not proportioned to the *height*. They are all too short in the sides and neck, from the ears to the insertion of the tail. They do not cover ground, I do not at present remember one country-bred colt, remarkable for length; or equal in that respect to the English Horse. In blood, bone, height, breadth, and depth of carcass, they are very often quite equal, but in *length* no essential one would imagine to the Race-horse, they literally *fall short*. The English Horse, with a back quite as short, is in toto, more lengthy and extensive: there is what is called "more of him" that is more of those parts most used in moving; viz. the *shoulders* and *haunches*. Would not this seem sufficient reason for the inferiority of country-bred colts in the race? But whatever that inferiority may be attributed to, their want of length is very striking; and I should be glad to know the opinions of experienced breeders as to the cause of this alleged defective proportion. May it be derived from the original stock on the side of the dam? The height of large country and northern mares is often too great for their length; yet these colts at the Stud and at other places, produced from English mares did not seem free from such defect. Perhaps it may be more reasonably supposed that the pasture of this country is not sufficiently nutritious to give all the points of *figure* to colts of such a height, as the large English Horse will naturally get; and that from this cause they became defective, either in the length or the bone, or the depth of girth and carcass. If this be supposed, English horses of the size of the natural Indian should be sent out, from 14-2 to 14-3 perhaps.

While on this subject, it may not be amiss to remark that the pasture of the "Dakbun," where they have the best proportioned natural Horse, is far superior to that of our own provinces. The bay about Neemuch in the month of November when it becomes ripe is in great abundance; rises to 2 feet and 30 inches, and if cut and stacked at that time is very sweet and equal to any I ever saw in Europe. Grain I believe at present dear; but on the whole I think a Stud in that part of the country, if it can be established, would very soon repay all expenses attending it. I am, Sir, your obedient Servant,

LISTENER.

### Plan to Benefit the Condition of the Natives.

To the Editor of John Bull.

It is with heartfelt pleasure that I observe you allow the Natives of this Country to discuss Political subjects; and as I am interested in the remarks published in your BULL of yesterday, allow me to submit through your Journal to the consideration of the persons, who can lend an ear to it, a plan which, I think, would improve the condition of the Natives, and may eventually tend to remove the corruptions and impositions practised by the Native Amlahs, to which the Public Service is often liable. I mean the granting of certain grades, something similar to what is bestowed on the Native Corps, which may be opened to the various Native Servants of Government, consisting of *Kiranees*, *Monshees*, *Mohirris*, and *Tahsildars*, &c. in the four distinct classes of the Judicial, Revenue, Commercial and Military Departments.

As it is indispensably necessary, that a certain number of these Native Officers should be continued in the Service of Government, to aid and assist the Conventured Servants in execution of their duties, at least till it is practicable to introduce Europeans to fill up the offices now held by them; they should be men of chosen character, abilities and knowledge, to insure which let abilities and talents be the only principle on which they are to be admitted into the Service, and good character, upright principles, and length of service of the persons already in the Service, are to be the only claims to entitle them to promotion, and be placed in situations of trust and responsibility.

The utility of this is so obvious, that it is needless to dilate further on it. A Native will have always in view some prospects of rising from a salary of 10 to 200 Rupees per month, and have title or rank; and when he will know that he cannot use unfair and dishonest means to gain money, without endangering himself, and the loss of his rank and appointment, he will live honestly within his income, consequently extravagance and profligacy will be banished, and idleness suppressed; no stranger unqualified or of indifferent character should be admitted into the Service, or allowed to supersede the old faithful and useful servants, as has hitherto been the case, thro' the interest and *Misbehavior* of the *Sahibs*.

When the old Amlah will no longer remain in constant dread of being turned out of his situation, his mind, freed from fears and anxiety, will no longer remain enslaved. He will gradually discover ability, knowledge, and good character, to be the only means by which he is to bring himself to the notice of Government and its officers, and to obtain employment in its Service. This will render it necessary for him to acquire knowledge, and it will excite the desire of improvement.

The present practice of procuring and disposing of the Amlahship will be done away, and the innumerable and perpetually increasing candidates who, aided by *Snefarish*, influence, &c. infest the Offices of Government and trouble its Officers for employment, which it is not in their power to give, without removing the old establishments, which removal so disheartens, frightens, and agitates the present Amlah and destroys their peace of mind; this, the chief cause of corruption, will be discouraged.

When the Natives find that the chance, which is now opened to every one from the highest to the lowest, of getting into respectable situations merely by interest, will know, that they cannot obtain employment by practising unfair means, they will turn their attention towards procuring their livelihood by more honest means, by entering into useful branches of employment, such as *Trademen*, *Mechanics*, &c. they may even go to sea and visit foreign countries, in *Merchant* service.

The present *Chakree* and *Nowkree* (or *Slavery* and *Servitude*) are aimed at by almost all classes and casts, particularly in *Bengal*, whether they be possessed of millions of property or are destitute of livelihood, a general Native Trade, in which they acquire money without either intellectual exertion or bodily labour. This profession I think is the mother of all evil; by its diminution, indolence, the bar of improvement, will be discouraged, and the useful arts, such as *Agriculture*, the *Arts*, *Navigation*, &c. though at present very absurdly viewed by them as degrading occupations, and scorned by many, will be gradually introduced at the same time. Government will always have experienced, well acquainted, and able Amlahs, who may be transferred from one department to another, and the business of the State will be conducted with more regularity, ease, and less trouble to its Officers.

In this arrangement, however, it will be necessary to frame most rigid and particular rules, to compel the Native Amlahs to be better behaved. They may be punished by degradation, fine, suspension, and dismission, to be awarded by Courts, to consist of both European and Native Officers of Government, instead of the present system of prosecuting its own servants by its own Court of Justice. The culpable, the grateful, dishonest, and incapable men, may be marked with conspicuous



of their character, to be granted to them, by the relieving or relieved Officers, which, to prevent partiality, prejudices, and dislike, are to be executed under certain rules. Should this meet with the approbation of your readers, I would beg leave to submit it to those Gentlemen who are able to enlarge and illustrate it, and who may have inclination to bestow attention towards improving the Natives, for whose improvement in their condition and morals, I am ever interested, and remain,

Sir, Your obedient Servant,

S. N.

### Palmyras Light House.

To the Editor of John Bull.

Sir,

It may be interesting to your nautical readers, to know that the Palmyras Light House has at length been commenced, and is now six feet above its foundation. It is placed in the centre of the little Island of Mypurra, which is about a mile long and half a mile broad, and about three miles distant from the nearest shore, but is connected with it by a very narrow strip of dry sand, only 150 yards in average width, though three miles in length.

A Light House on this Island (now considered the point) has been talked of at different periods, as far back as ten or fifteen years, but a stout argument existed at one time, whether False Point or Point Palmyras were the most eligible situation for the Light House.

The majority of Commanders who were called upon by Government for their opinions, gave their votes for False Point. They declared that they would not venture to look for a Light on Point Palmyras. That were they to do so, they should probably get upon the Reef, which extends out from the latter point, before they could see the light, whereas False Point might be approached within 3 or 4 miles with perfect safety.

On the other side of the question it was replied, that the dangers of the Palmyras Reef, were not so great as had generally been imagined, owing to the extreme exaggeration of the old Charts. That a reference to the modern Survey of the Marine Surveyor General, the late Captain Court, who was one of the principal supporters of this side of the question, showed that the largest ships might approach the Island of Mypurra in fine weather in perfect safety, within two or three miles if desirable, coming from the Southward, though it was admitted that after reaching the latitude of the island, it was necessary to keep much farther off, but that the smallest attention to the well known soundings off the point, would obviate all danger in sounding the Reef. The advantages of Point Palmyras over False Point were stated to be considerable, being ten leagues nearer Port, and being the cruising station for Pilot Vessels.

After much deliberation and a reference to the Court of Directors, the question was decided in favor of Point Palmyras, but as might have been expected most Commanders of Indiamen and the majority of the Pilots of the Port, still argue against the utility of the Palmyras Light House; but it is probable that time will effect a considerable alteration in this opinion, and that it will be found more useful than is generally imagined at present.

It is very certain that ships coming in from the Southward often approach Mypurra, even now within eight or ten miles; and early in the month of May last, one ship approached within half that distance. Her hull was visible considerably below her tier of ports, and even the men could be seen with a glass from Mypurra. It was a gratifying sight to the Islanders who are beholden to her Commander for a treat of some importance in such a situation.

The height of the building will be 100 feet, exclusive of the lantern, which is 43 feet higher than that of Kedgeroe, and navigators may judge how far this may be seen, not merely by calculation, but from the fact that the Black Pagoda is only about ninety feet high. That is the principal part of that ruin, the small detached chimney (as it has been called) being too slender an object to be seen from any great distance. In clear weather, Horsburgh states that the Black Pagoda may be seen six leagues off. How far the Light House may be seen by night will depend materially on the kind of light kept up in the lantern, which in this case will no doubt be the strongest that modern science knows how to produce, and will probably be obtained from gas.

The precise period of its completion cannot be accurately predicted, considering the uncertain elements which may chance to impede its progress, but perhaps it may be safe to state that the Light House will be high enough to be useful as a Beacon by day, before the end of next South West Monsoon, and that it will be ready to exhibit a light by the commencement of the S. W. Monsoon following.

### HIGH WATER AT CALCUTTA THIS DAY. H. M.

Morning ..... 2 0  
Evening ..... 2 26

### Ship Upton Castle.

To Commodore John Hayes, Master Attendant, &c. &c.

Sir,

I beg leave to inform you of my safe arrival at the New Anchorage with the Ship UPTON CASTLE, at which place I intend leaving her to replace damages.

I was put out from the H. C. Pilot Vessel PHILIP DUNDAS, on the 8th of this month, just to the North of Point Palmyras, and cruised Balasore Roads the whole of that day, the weather threatening to become bad. At 11 P. M. of the 8th, a severe gale commenced from West and W. S. W. I immediately put the Ship to Sea—On the 9th, struck top gallant yards and masts, and made the Ship snug as possible for the gale, the gale varying from West to S. W. with a tremendous heavy Sea and showers of rain. Lost the fore sail and two fore stay sails. On the 10th gale still increasing and the Sea rising, Ship labouring heavy at 10 20 A. M. the main mast broke below the upper deck, taking the partners of the mast, the life rail, fore top sail yard, mizen top mast and top sail yard with it, and carried away the mizen mast head and sprung the mizen mast just above deck: put the Ship before the wind and got the wreck clear in the course of 10 or 15 minutes. Finding ourselves nearing the Reefs, prepared to anchor the Ship as we had no sail left to lay too under. At 4. 30 P. M. struck soundings 60 fathoms: at 6 rounded too and anchored the Ship with the best bower in 25 fathoms: wore away a whole cable and brought the Ship up, gale still severe, and the Ship labouring heavy, threw Salt overboard from the fore and mizen hatchways; at 11 P. M. broke the Tillers;

11th June.—Gale still severe and a heavy Sea; at 3 A. M. the larboard boat on the quarter was washed away, in the forenoon struck the fore yard to save the mast, in the afternoon got 2 other Tillers shipped but carried them both away, at 8 P. M. sighted a blue light, supposed to be the Light Vessel bearing N. E. At 9 P. M. while making a new Tiller, the Rudder suddenly disappeared, gale moderating—throwing overboard Salt, and one pump continually going.

12th June.—Gale moderated to a strong S. W. by W. wind. At 2 A. M. made a temporary Rudder with the driver boom. at 7 A. M. conceived it impossible to get the anchor, cut the cable and ran into the N. N. E. At 8 A. M. sighted 2 Vessels bearing, N. N. E. fired 2 guns and hoisted the colors Union down at the fore top mast head; it was answered by the HATTRASS Pilot Vessel. At 10 30 A. M. anchored in 8 fathoms between the GUIDE and HATTRASS Pilot Vessels, in the Eastern Channel. At 5 P. M. Mr. Clark, Commander of the HATTRASS, hailed and enquired our distress, and I requested that he would tow us in, which he said he would do.

13th June.—Pleasant weather and fine S. W. wind: at 7 A. M. while attempting to weigh the anchor, parted the cable. At 7 30 A. M. the HATTRASS Pilot Vessel took us in tow: at 6 P. M. anchored off Black Point, and the HATTRASS towed us into New Anchorage this morning 14th.

I am, Sir, Your most obedient humble Servant,

Ship UPTON CASTLE, New } JOHN CEARNS, Mate.  
Anchorage, 14th June, 1822. }

### CALCUTTA, JUNE 17, 1822.

Current value of Government Securities, Money, and the Course of Exchange with England.

BUY	Six per Cent Loans	100	100
10	Premium Unreittable	100	100
17	8 Ditto Remittable	100	100
17	8 Ditto old Remittable Loan	100	100
	Notes, untransferred	100	100

Bank Rates of Discount and Money Loans.

Govt. Bills of Exchange and Acceptances	12 per cent per annum
Private ditto ditto	12 per cent per annum
Loans on Deposit of Govt. Paper, &c.	12 per cent per annum

Bank Rates of Discount and Money Loans.

Govt. Bills of Exchange and Acceptances	5 per cent per annum
Private or the Merchants' ditto ditto	5 to 10 ditto ditto
Loans on Deposit of Govt. Paper, &c.	5 ditto ditto

Bank of Bengal, Sherah, &c.

Buy 3600 Rupees ..... Sell 3700 Rupees

Bills of Exchange on England.

3 months sight, or 12 months date 20 to 24

**Question.**

Why see we such a different mien  
In those who ne'er have married been?  
From those who joyful spend their lives.  
As loving tender-hearted wives?

**ANSWER.**

It is because in bloom of youth,  
They won't not vow the vows of truth,  
But prone to play with ev'ry one,  
They know not whom to fix upon.  
In these and such deceitful ways,  
They spend the morning of their days.  
Till time, which hovers o'er their head,  
His furrows on their brow hath spread.  
'Tis then with pain on years gone past,  
A retrospective view they cast,  
They grieve to think what havoc's made,  
On charms that have so soon decay'd,  
That men on whom their arts were play'd,  
Will be by them no more betray'd.  
Yet still they try, but all in vain,  
Their trying aggravates their pain,  
The men no longer will believe,  
For them no longer will they grieve.  
They e'en forget that once they were;  
No young, so gay, so lively fair,  
Alas! how chang'd the scene is now  
For pain, and sorrow makes their brow.  
Their sallow cheeks too plain bespeak  
That Beauty's form is left a wreck,  
And thus it is, they fret and grieve;  
To think they can no more deceive.  
Till quite o'ercome with pangs of thought,  
At length to deep despair they're brought,  
'Tis this that makes their fretful mien,  
In married women seldom seen,

Calcutta, June 13, 1822.

PHAON.

*Chazapara, June 8, 1822.*—On the 24th ultimo, we had a dreadful squall from the Northwest here, accompanied with much rain, thunder, and lightning: great damage was done to the huts occupied by the Natives. A Boat was also swamped on the opposite side of the river, loaded with Saltpetre: the whole cargo was much injured, and it is to be feared that many similar accidents occurred during the storm.

The Station still continues healthy, and the men of the European Regiment are all busy, preparing for their long march to Nagpore. They seem (in general) to be highly pleased at the idea of seeing such an extent of country.

There are no dangerous cases at present in the European Hospital. The weather still continues cool and pleasant, the wind, (almost constantly) blowing from the East, so cool is it that Tatties during the heat of the day are seldom or required.

To the Editor of the Saugbad Cowmoody.

Sir,

By kindly inserting the following short subject in your Cowmoody, in order to make it known to the public, you will oblige me:

We hear of the sufferings of destitute persons from the late scarcity of salt; and to some of their troubles we also are eye witnesses, as among the great many poor people living in Krishtno Noger, Soorool, and other places near the woods, those who purchased two Chittaks for their daily consumption, owing to the scarcity of salt, are now obliged to do with half a chittak, and in that again to infuse mud, and thus to content themselves. In those places where ten thousand maunds of salt had been sold, perhaps not even five maunds can be disposed of, now that the price of salt has been so much raised. Moreover, we think, that if some merchant should take into those countries Korkoch salt, then the common Panga salt would not be sold in those places. However that be, this circumstance is every day proving more and more troublesome to the indigent, miserable, and poor people.

**Shipping Arrivals.**

**BOMBAY.**

Date	Names of Vessels	Flags	Commanders	From Whence	Left
May 22	La Constance	French	A. Regnaud	Mauritius	—
23	Seaforth	British	R. M. Dowal	Liverpool	Dec. 26

**Shipping Departures.**

**CALCUTTA.**

Date	Names of Vessels	Flags	Commanders	Destination
June 16	Dauvegan Castle	British	D. Campbell	China

**BOMBAY.**

Date	Names of Vessels	Flags	Commanders	Destination
May 23	Bombay Merchant	British	P. Gregory	Malay Coast
23	Mercury	British	J. Stent	Persian Gulph

**Stations of Vessels in the River.**

JUNE 16, 1822.

At Diamond Harbour.—ST. THIAGO MAJOR (P.)—ELIZA, inward-bound, remains.—ROBARTS, outward-bound, remains.—ST. ANTONIO (brig) passed down.

Kedgeret.—WELLINGTON.

New Anchorage.—H. M. S. TERES.—H. C. Ships EARL OF BALCAN, RAS, and SIR DAVID SCOTT.—LADY FLORA.—UPTON CASTLE.

Saugor.—FRANCES CHARLOTTE and PALLAS, gone to Sea.—HARRIET, below Saugor.

**Passengers.**

Passengers per THIONMOUTH, from Mocha to Bombay.—Mohomed Jolu, Son of the Sultan of Acheen, and two Servants; Shaik Mahomed, Arab Merchant.

Passenger per SEAFORTH, from Liverpool to Bombay.—Mr. Lewis Jones.

**Administrations to Estates.**

James Slaveley, Esq. late Barrister of Law at Madras, deceased.—John William Dore, Esq.

Captain Elias Vivian Dunsterville, late of Fattyghur, in the Honorable Company's Bengal Military Establishment, deceased.—Mrs. Clara Dunsterville.

Mr. John Imlay, late of the Town of Calcutta, Boot and Shoe-maker, deceased.—Mr. William Currie.

Mr. Benjamin Rogers, late of the Town of Calcutta, Mariner, deceased.—Mr. James Dowling.

**Letter on Fees.**

Adverting to the Letter on Fees, which appeared in our Paper of yesterday, signed "ONE OF THE FORTY," we take occasion to state that we should not have given it insertion had we thought it possible that it could be considered as reflecting on the Registrar of the Supreme Court; an intention which we wholly disavow, and we extremely regret the appearance in our columns of any Letter which may be considered open to such a construction. From our knowledge of the Registrar we have no hesitation in stating our entire disbelief of any imputation which the Letter may contain, or may be thought to contain, on the conduct of the business of that Gentleman's Office.

**Letter on the Order of the Bath.**

Although the Letter on the Military Order of the Bath published in a preceding page, involves a Military subject, we have read it carefully, and cannot discover that it comes under the head of the prohibited topics, or we should have declined its insertion. It is evident that the Writer is not complaining of any professional grievance, which he appeals to the Public to get redressed; but calmly and dispassionately states his opinion on a Question of Policy or History, after his examination of the Records of the late War;—and it appears to us therefore as unobjectionable a topic as would be an enquiry into any other general Institution of a Military nature, such as Mr. Mill, Mr. Prinsep, Col. Blacker, Gen. Malcolm, or any other writer might treat of in their respective works. We state this now, to prevent any subsequent misconception of our motives in giving it insertion.